

Date: November 20, 1997

Case Nos.: 97-ERA-14, 18, 19, 20, 21, 22

IN THE MATTER OF

**John R. Williams
Joe McQuay
Norman Olguin
Gilbert Rodriguez
Tom Byrd
Steven Sottile
Complainants**

v.

**Mason & Hanger Corp.
Respondent**

RECOMMENDED DECISION AND ORDER

Preface

I became regretful during the lengthy trial that, at least as to the five Complainants who remained in the employment of Mason & Hanger, I had not insisted on mediation as a possible solution to the concerns raised. I particularly have this sentiment in view of Complainants' counsel's assertions that their motivation was not profit, but to prevent unsafe working conditions and promote freedom of speech concerning safety.

After more than a week of testimony from 27 witnesses, several hundred pieces of documentary evidence and thorough post-trial briefing by both counsel, however, I am not persuaded that Complainants were victims of retaliation by Mason & Hanger because they voiced safety concerns about the W55 Weapon Dismantlement Program. To the contrary, it is my finding that while there was admittedly dissension and disagreement in the work environment surrounding the project and the procedures

necessary to complete the W55 task, Mason & Hanger's management acted promptly and responsibly to correct both real and perceived safety and personnel problems. I also find that Complainant Williams departed the employment of Mason & Hanger of his own volition, not because he was constructively discharged.

Basically, what I have determined from the evidence, and will attempt to set out hereinafter, is the conclusion that the primary conflict that existed from February, 1996, until December, 1996, was the inability of PT Teams A and B to work harmoniously together on the W55 Program. These workers, along with two or three on-line operation supervisors, had personality conflicts which led to disharmony. In every instance, however, upper management, upon knowledge, promptly responded not only to calm the personalities, but to meet the safety concerns, reconcile the differences of all employees and avoid a reoccurrence of the problem. Despite this fact, Complainant Williams seemingly met solved problems with new ones. The other Complainants, though not as vocal as Mr. Williams, appeared to follow his lead and too often sought problems over solutions. I recommend no recovery or remedial action be taken against Mason & Hanger as a result of these complaints.

Background

These proceedings arise under the employee protection provisions of the Energy Reorganization Act ("Act"), 42 U.S.C. 5851 (1992) and involve appeals from a series of decisions reached by the Occupational Safety and Health Administration ("OSHA") which found that Complainants, six military nuclear production technicians ("PT's") at the Department of Energy's ("DOE's") Pantex Nuclear Plant ("Pantex") in Amarillo, Texas, were the targets of retaliation by their employer, Mason & Hanger, Silas-Mason, Inc. ("Mason & Hanger" or "the company" or "Respondent").

This case was assigned to me in December, 1996, set for trial March 31, 1997, and after an agreed continuance, a formal hearing was held June 23-30, 1997, in Amarillo, Texas, at which time the parties were afforded full opportunity to present evidence and argument. The parties sought and were granted until September 12, 1997, to file post-hearing briefs. The findings and conclusions in this Decision are based upon observation of the witnesses who testified, upon an analysis of the entire record,

arguments of the parties, applicable regulations, statutes and case law precedent.¹

Exhibits and Stipulations

The exhibits in this case consist of Administrative Exhibits, Complainants' exhibits and Respondent's exhibits. At the outset of the hearing, the parties stipulated that (1) Respondent is subject to the Act and (2) the Complainants were employees protected under the Act.

Issues

The following are the unresolved issues in this matter:

1. Whether the Complainants engaged in protected activity under the Act;
2. Whether the Respondent knew or had knowledge that the Complainants engaged in protected activity;
3. Whether the actions taken against Complainants were motivated, at least in part, by Complainants' engagement in protected activity; and
4. What damages, if any, the Complainants are entitled to.

Procedural History

1. Each Complainant filed with OSHA and has pursued this appeal, pursuant to the employee protections provisions of the Energy Reorganization Act, 42 U.S.C. Sec. 5851, as amended.

2. Mr. John R. Williams filed his first complaint dated July 26, 1996, alleging a hostile work environment. On November 21, 1996, OSHA issued investigative results in Mr. Williams' favor. Mason & Hanger filed an appeal on November 26, 1997, and Mr. Williams cross-appealed. Mr. Williams filed a second complaint,

¹ The conclusions that follow are in part those proposed by the parties in their post-hearing proposed findings of fact, conclusions of law and order, for where I agreed with summations I adopted the statements rather than rephrasing the sentences.

dated December 2, 1996, alleging that he was constructively discharged and that he had been subjected to a hostile work environment. (AR 1).

3. Mr. Joe McQuay filed a complaint alleging a hostile work environment dated November 18, 1996. (AR 2). Mr. McQuay also filed an addendum to the complainant dated December 16, 1996. (AR 2).

4. Mr. Norman Olguin filed a complaint alleging a hostile work environment dated November 19, 1996. Mr. Olguin also filed an addendum to the complaint dated December 16, 1996. (AR 3).

5. Mr. Gilbert Rodriguez filed a complaint alleging a hostile work environment dated November 19, 1996. Mr. Rodriguez also filed an addendum to the complaint dated December 16, 1996. (AR 4).

6. Mr. Tom Byrd filed a complaint alleging a hostile work environment dated November 19, 1996. Mr. Byrd also filed an addendum to the complaint dated December 16, 1996. (AR 5).

7. Mr. Steven Sottile filed a complaint alleging a hostile work environment and failure to promote dated November 19, 1996. Mr. Sottile also filed an addendum to the complaint dated December 16, 1996. (AR 6).

8. On December 26, 1996, OSHA issued investigative results concluding that evidence supported the finding of a hostile work environment for the five Complainants who filed after Mr. Williams. Each received individual letters with the results and ordering Respondent to abate the hostile working environment by continued use of existing or new and enhanced programs, or to negotiate an amicable work related, and/or substantial monetary resolution of the matter. Respondent filed an appeal as to each complaint dated December 31, 1996. (AR 2-6).

9. By Order dated January 8, 1997, the cases were consolidated for formal hearing before the Office of Administrative Law Judges.

Findings of Fact

1. Respondent, Mason & Hanger, manages and operates Pantex, the nation's

only nuclear weapons dismantlement facility, under contract with DOE, which owns the plant.

2. In the relevant time period, there were approximately forty-two weapon's programs and support activities on-going at Pantex. One of these was the W55 program.

3. Complainant John "Randy" Williams was hired by Respondent as a PT (production technician) in January 1994. Before coming to Pantex, Mr. Williams owned and operated a heating and air conditioning business. Mr. Williams left the employment of Mason & Hanger on November 27, 1996.

4. Complainant Steven Sottile joined Pantex in May of 1994, after twenty four years in the Navy's nuclear weapons program and was still employed as a PT at Pantex at the time of the hearing..

5. Complainant Norman Olguin began his employment with Mason & Hanger March of 1982, and became a PT in 1985. Mr. Olguin has worked continuously as a PT since that time, and is employed as a PT today at Pantex.

6. Complainant Gilbert Rodriguez began his employment with Respondent in 1984, and became a PT in approximately 1991. Mr. Rodriguez has worked continuously as a PT since that time, and is employed as a PT today at Pantex.

7. Complainant Joseph P. McQuay, Jr., has worked continuously for Mason & Hanger at Pantex for over thirty years. His employment there began in 1966. Mr. McQuay started as an assembly operator, became an inspector and then a training specialist. In 1985, Mr. McQuay became a production supervisor. In 1990, he became a line PT as part of a reduction-in-force by application of his union's collective bargaining agreement. He is employed today at Pantex as a PT.

8. Complainant Tom Byrd was hired by Mason & Hanger as a PT in September 1995 after working for a subcontractor at Pantex. He is employed in that capacity today.

9. The W55 dismantlement program was suspended in the mid-1980s and was restarted in early 1995. When started anew, the program was in its engineering and

design phase and under the control of the Engineering Division. The senior-most Mason & Hanger manager with the direct day-to-day responsibility for the program at that point in time was Kathleen Herring, Director of Program Management. Immediately under Herring was Mitch Carry, a W55 Program Manager in the Engineering and Design Division, and next Rustin Long, the Operations Manager. Engineers Ernie McNabb and Paul Salazar were assigned to work with the PT's while in training to assist in drawing up and improving standards.

10. The W55 Program Manager, Operations Managers and Production Technicians from the Manufacturing Division, were considered "matrixed" to the Engineering and Design Division during training. David Cole was the W55 Manufacturing Program Manager. Reporting to Cole were Operations Coordinators, Operations Managers and Production Technicians. Danny Brito, Operations Coordinator, was considered a liaison between engineering and design division and the manufacturing division. Brito had the authority and the responsibility to take care of problems in the engineering and design phase directly related to the line operations.

11. On March 26, 1996, the W55 program passed its safety evaluation and was permitted to proceed from the pilot phase to full production. At that point, its functions were placed under the control of the Manufacturing Division, the Director of which was James Angelo. The person immediately under Angelo with day-to day contact and responsibility over the W55 program was Cole, Program Manager. Subordinate to Cole were Operations Coordinator Brito and Operations Managers John Pontius and Paul Harter.

12. During the initial engineering and design phase, the training for PT's was devised and the PT's themselves instructed. In this phase, procedures and tooling for dismantlement of W55 weaponry were developed, and the first two teams of PT's (the A team and the B team) were trained. A third team completed training in June 1996, under the Manufacturing Division.

13. The "A" team consisted of John Barton, Randy Heuton, Jim Moore, Ted DuBose, Renee Stone, Fernando Rodriguez ("F. Rodriguez"), and Don O'Neill. The "B" team consisted of Ann Jackovich and Rustin Long, as well as the six Complainants.

14. Training for the A team and the B team on the W55 was conducted by

Jackie Peak. Training was to consist of imparting instruction in Nuclear Explosive Operations Procedures (“NEOP’s”), radiation safety, and methods for safely operating equipment used in dismantling weaponry containing high explosives and radioactive materials.

15. The function of training was to train PT’s to the point of being “qualified” to work on the production line under the supervision of a “certified” PT. (Certification is obtained by working satisfactorily on live weaponry.)

16. The A team was trained first and stayed in training for six or seven months and given the opportunity to dismantle the trainer or “dummy” weapon, which they considered invaluable experience, on numerous occasions. Subsequently, the B team remained in training only three months, they had only two or three opportunities to dismantle the dummy weapon, and the training by instructor Peak was deemed to be less than satisfactory by most every ones account.²

17. Jackovich, a member of the B team along with Complainants, testified that during training, Complainants Williams, Olguin, and Sottile were distracting and repeatedly interrupted the training. If they were not happy with the answers that instructor Peak provided, they would make comments like, “When we get there, we’ll just shut the program down, and we’ll deal with it there.” Also, before they went on the line, Jackovich stated she also was aware that Williams had animosity toward A team member John Barton, and would make comments “that would really anger John.” She thought it was Williams’ goal to make Barton angry.

18. Jackovich also testified the training was interrupted by the absences of Complainants McQuay and Williams. She said there was an incident during training, when she was simulating a slow, delicate procedure, and Complainant Williams stepped on the stand where she was standing, pushed her off, grabbed the tool out of her hand, and said, “Well, my dose rates are going up,” and he proceeded to finish her project.

² Based on their counsel’s representations at the hearing, the Complainants, all of whom received the “B” team training, while dissatisfied with the training seek no remedy or relief for the inefficiency of the instructor, Jackie Peak. While the training left something to be desired, they do not allege it was designed as retaliation. (Tr. 1743).

19. By design, the A team had been given more time in training, with the idea that training methods, tooling, and procedures would be developed and refined during that phase. The expectation was that the B team would then be trained on these “safe and repeatable” procedures.

20. Nuclear weaponry at Pantex is dismantled in two different areas. The “bay” is the area where mechanical dismantlement operations are performed. Weapons are then transferred to the “cells” where the physics package (which contains radioactive material) and high explosive (“HE”) are removed.

21. The cell is designed to contain nuclear materials in the event of an HE explosion.

22. Cells and bays both have designated “contaminated areas” where specific safety procedures must be followed.

23. Cells and bays are operated under strict security with specific lock and unlock procedures.

24. With the exception of Byrd, all Complainants went down on the line (bay) to begin dismantling work on the W55 program on February 6, 1996. Complainant Byrd and Ann Jackovich did not go to the line until March.

25. All the Complainants were made aware of the company policy that if a situation appeared unsafe he or she had the authority to stop work and shut down.

26. Because the A team had worked on the line for about 4-5 months and completed 13 units before Complainants got on the line, the A Team had established a close-knit team and a feeling of “ownership” of the process which they had helped to implement.

27. Because the B team did not have the benefit of being trained or associated with the program for as significant a length of time as the A team before being assigned to the line, Carry suggested putting a portion of that team in the cell and the other portion in the bay so they could work with people who had experience in this process.

28. Before going on line, Complainants Sottile and Williams had gone to Long regarding the difference between the set-up in the training bay and how things were set up on the line. Long responded by saying that they would see the actual set-up when they got down on the line because in training there was limited space.

29. Also, during training, Sottile and Williams went to Herring with three (3) complaints concerning (1) the functioning of the task exhaust; (2) the functioning of the ventilation system or air handling system; and (3) the bonding on a tester that was used on the W55. Regarding the first two concerns, Herring went to the facility manager to make sure that he had turned in a work form to get the task completed. He had, and showed it to Herring.

30. As to the bonding of tester, Herring tried to work out the issue by diagraming and explaining that an expert from Sandia³ was looking into that and was supposed to furnish the plant with the report. Herring told Sottile that when the report came in, she would get back to him. When Herring got back to him, Sottile was satisfied with her response.

31. During training, Peak explained to the PTs in B team that they would wait and go over the standard regarding case-cutting on the line. When he heard this, Complainant Williams threw down the standard from which he was reading and quit reading.

32. Williams and Sottile later approached Herring and asked why the case cutting portion of the procedure had been skipped. She explained to them that they could put the tooling on and manipulate the tooling on the training unit, but they could not simulate the case-cutting procedure because doing so would destroy the training unit. She further explained to them the approved procedure to perform on the operation, including the viewing of a video and using the actual tooling to manipulate the unit. Herring also asked Sottile and Williams if they wanted her to speak to Peak about it and they said no.

33. Olguin did not complain to anyone other than fellow PTs about the events regarding the case-cutting procedures and does not know what the company could have done with regard to an alternative to being able to cut the trainer unit. Byrd received

³ Sandia Laboratories and Lawrence Livermore Labs were design agents.

his on-the-job training in the case-cutting operation within approximately two (2) weeks of going down to the line.

34. Williams felt that Peak had a negative attitude towards him personally because Peak would make a “time-out” signal with his hands when people were asking him questions, and he would say in response to questions, “You need to get a hold of Engineering, because my job is to read and teach the standard to you.”

35. McQuay did not raise any safety concerns to management during training with respect to training. Olguin did not raise any complaints about flaws in the training programs to any of management. Rodriguez did not have any training concerns. During training, neither Byrd, Rodriguez, nor McQuay raised any issues with Peak. Sottile did not raise concerns about not being qualified to go on the line. On a visit to the training area, Carry asked the B team if they had concerns he needed to follow-up on and they stated, “No.”

36. During training, the B team went to the line to observe a procedure. On one such occasion, Olguin asked Long whether Pontius was supposed to have removed a “Do Not Use” tag from some tooling. There was no evidence that any Complainant (including Olguin and Rodriguez) asked Pontius about the incident, or reported it to anyone in a position of authority over Pontius.

37. Long double-checked the standard on that issue and called Pontius to explain to him that technically he was not to move the “Do Not Use” tag. Pontius responded “okay”.

38. As a result of Complainant Williams’ complaints about training, Mason & Hanger changed the training program by assigning a PT to work with Jackie Peak during training and allowed the next training team to come down and watch the demonstration by certified PTs on the case-cutting procedure.

39. On February 20, after arriving on line, Sottile noticed there was a piece of equipment - - a cap puller - - with a knob on it, instead of a nut as there had been in training. Sottile discussed this situation with Williams. Sottile decided to place a “DO NOT USE” tag on the piece of tooling. When he raised the issue to Pontius, Pontius told Sottile it was an acceptable piece of tooling. The A team PTs also informed Sottile that it was an acceptable piece of tooling.

40. Subsequently, Sottile and Williams looked at drawings of the tooling and found out that the knob was, in fact, the proper piece of tooling. Sottile and Williams then had the "DO NOT USE" tag removed, but Sottile's tagging of the tooling suspended that portion of the operation for a week.

41. On one occasion, a pressurized stream of water hit Williams in the face during a removal procedure. Sottile and Williams spoke with Pontius about using face shields and Pontius was receptive to the idea. Pontius turned the issue over to Carry. The same day, Carry and Herring met with Williams regarding the use of face shields. Herring explained to Williams that personal protective equipment, face shields, would have to be approved prior to Williams wearing one in the cell. Carry then directed the Engineers to incorporate face shields as personal protective equipment into the procedure.

42. When Carry explained to Sottile that he would have to wait until the face shields were in the procedures to wear them, Sottile instructed him to put them in. Though Sottile acknowledged other technician's concerns about putting the face shields on prior to them being in the standard, he told Carry "I don't need you to tell me what safety equipment I can't wear." Subsequently, Carry told Sottile he was putting the face shield in the standard. Pontius recalls that the face shields were implemented within a day or two.

43. Carry does not recall who raised the issue with him about water sampling studies, but he initially told them that water sampling had been done. Herring told Williams that she had requested a report and was told the results were negative. Herring later found out that the report had not been done and requested it immediately. At the February 27th meeting, Carry said the sampling had not been done. The sampling was then done and the test for radiological contamination of the water showed no radiological contamination.

44. Manual force and pressing was used to place the HE back together. This method had been checked and proven safe. Williams and McQuay got into a dispute over the issue because Complainant McQuay wanted to stop the process. Pontius called Carry on February 15. As a result, Carry called an explosive expert, Ed Collins, and they went down to watch the process. Within the hour, Bob Railey, an explosive engineer, also came to the cell to address their concerns. After watching the process, Carry agreed that a better method should be implemented.

45. The tooling designer, Gary Beck, came at Carry's request and designed a new spacer which was manufactured and delivered by the 15th of March. The request for tooling change was the highest priority in the office. In the meantime, McQuay and others agreed to continue the old procedure until the new tooling arrived. Williams admitted he was comfortable with this answer. Thereafter, they performed the task with a procedural change to keep the PTs from squeezing the high explosive back together with the improvised tool and this method was added into the procedure.

46. Despite the corrective measures, Complainant Williams raised this issue again at the February 20, 1996, meeting. Carry said that he would have the experts come down the line to talk to the PTs on the W55 program to explain the explosives issue. On February 20, 1996, Jim Crutchmer, one of Mason & Hanger's experts, addressed the W55 PTs about pressing the HE. At that time, the tooling had been ordered and the manual force issue already had been addressed. Crutchmer was there to assure that there was no real hazard involved in pressing the HE.

47. Williams agreed that the company was working to fix the problem and Carry did not say or do anything hostile or negative. Carry's response was satisfactory in that he was taking responsibility for what was going on in the work area. Neither Carry nor Pontius were negative toward McQuay in any way about his involvement in this concern. Complainant Williams also acknowledged that Carry did everything he could to get things working right.

48. Complainant Williams brought a concern to Pontius about dust on the floor from rotating the unit. Jim Moore made it known to management during a meeting that he wanted some type of vacuum fixture on the bag. This issue was raised by Williams in his February 20 meeting with Carry, Herring and Long. The dust involved a portion of the operation which was being performed on a downdraft table. The downdraft table was an open ended box made of plexiglass containing a vacuum that kept all contaminated dust in the filters and out of the PTs' breathing area. The vacuum created negative pressure and pulled uranium oxide through the filters.

49. McQuay also brought the issue up to Pontius. Pontius agreed that it was a concern, but knew that they had done airborne testing and that they had not hit any levels that would bring a red flag to the Health Physicist, the Radiation Concern Department or the Department of Energy. Because this situation had been addressed before and those readings had been well documented as being non-reportable, Herring

did not see that as a potential safety concern, but she treated it as a safety concern.

50. Sottile agreed that Mason & Hanger took remedial action regarding the emission of the contaminated dust. On March 1st, the PTs met in the training area where a large group of people, including Sottile, looked at the process to come up with ways to minimize the dust. They developed the process of using tape so that dust would not escape. The company also built a piece of tooling which addressed the issue of the dust falling out of the bag. The catcher that was designed was used in conjunction with a vacuum that was already in place in the cell. No new units were begun until the new mechanism was in place.

51. In the meeting on February 20, Williams also raised a question about the BZ's (Breathing Zone Monitors). Carry and Herring explained to him the Radiation Safety Department had all of the data gathered from these and they could get the data for him if he wanted. On February 23, Carry came on the line with the Health Physicist, Tim Pederson, and they discussed the concerns regarding the need to have BZ's monitor the dust and where they needed to go from that point. Pederson then explained to Williams why his suggestion of using a bag inside the box would actually end up bringing more contamination outside. Williams got visibly mad, rushed around the corner, rushed back to Pederson, and told him that if he did not think his suggestion would work, he was crazy and did not know his job.

52. On March 7, 1996, Gary Britten, who works with Pederson, wrote a memo documenting his concern with Williams' behavior, expressing the danger such uncontrolled behavior presented when working with nuclear explosives. (Resp. Ex. 29).

53. Following the episode, Williams told Carry that he was mad and he was leaving the bay. He also told Carry that he had two weeks to transfer him to another program or he was going to do something. Carry assumed that Randy was venting some frustration with respect to Pederson's response to his suggestion for the incorporation of bags, but was uncomfortable with Williams' remarks and the encounter. Complainant Williams later apologized to Pederson for his conduct towards both Pederson and Carry during that argument and stated he had lost his temper.

54. Regarding the actual technical issue presented by the BZs, Pederson was involved in the determination about whether breathing zone monitors were needed. He

determined that BZs were not needed because no airborne radioactivity concentrations existed in those operations. Instead, they went to a monthly uranium bioassay program for workers because bioassays were more accurate than breathing monitors.⁴

55. Hogs hair had previously been used for packing and sprayed with DDT to avoid bug infection. Herring recalls having the hair tested and determining there were minor levels of DDT in the hogs hair. Personal protective equipment, including lab coat and gloves, was already required by the Industrial Hygiene Department and the requirement was placed in the Standards or NEOPs for handling this exposure. When on line, Olguin questioned the DDT sampling of the hogs hair. He was told by Don Averitt that the study had been completed but the results were not in yet. A few days later they brought Olguin a paper showing him a list of 10 units and some contamination on those units.

56. Mr. Williams was the most outspoken member of the B team about the need for Mason & Hanger to take corrective measures yet there were times Williams himself performed his job in an unsafe manner. One such time occurred when Barton was working with Williams in the CA (contaminated area). Barton left to get another glove, and Williams lowered the weapon unit by himself, performing an operation the standards clearly state requires two or more PTs to perform. Williams setting the weapon down himself was hazardous.

57. On another occasion Barton was working on a high explosive, Barton was there with a reader (the PT who reads the procedure) and Complainant Williams, and he turned around and Complainant Williams was gone. Later when Complainant Williams was working with Anne Jackovich, Paul Diaz was lifting a weapon and putting it on to a stand. Williams was the reader, and he again got up and walked out. Williams also made an inappropriate log book entry.

58. A Team PT Stone testified she felt unsafe working with Complainant Williams because she never knew what was going to happen with him or when he was going to walk out of a procedure. She also felt unsafe around Complainant Williams

⁴ There were two instances on the W55 where the bioassay showed a 1/100th of a millirem of exposure, the annual limit for DOE being 5000 millirem and Pantex's administrative level being 900 millirem. In contrast to the bioassays, normal background radiation over the country is about 365 millirem.

because she did not trust him and in the work that they were doing the co-workers have to trust each other.

59. Like others, Jackovich too testified she did not like working with Complainant Williams because he would try to hurry, he did not really seem to know the process very well, and he would perform procedures in an unsafe manner. She also observed Complainant Williams performing an operation where he became panicky.

60. There is no dispute that the A team felt a sense of ownership about the development of the standards for the W55 programs, for they had put many hours into putting the standards together over a period of 7-8 months. The standards had been revised between the time training started and the time the PTs actually worked on a real weapon on numerous occasions. When safety issues would arise, PTs would have input into the discussions concerning those issues with the various experts.

61. The PTs on the A team were offended when Complainant Williams would say that he did not like the way the other PTs were working and the standard they had developed with the help of the outside experts.

62. When the B team arrived on line after they completed training, the A team attempted to work with them. Since the B team members were just beginning to work on the weapons and had no hands on experience, the A team tried to help them and answer any questions. Eventually, the A team realized that the Complainants did not want to hear what they had to say. They got that impression because the Complainants would not listen or would go to a supervisor or higher management for help instead of getting the PTs on the A team to help them. In other words, they sought no advice nor did they follow the chain of command.

63. Prior to the W55 program, Fernando Rodriguez testified he got along with the Complainants. He too raised safety issues and thought the B team brought up some good ideas, but they made him uncomfortable because they always carried notebooks and wrote notes.

64. The PTs on A team as a whole, perceived that Complainants were dissatisfied with the A team as PTs and with the operations managers. Sottile even instructed his supervisor, Pontius, on how to carry out his duties.

65. If the Complainants were not familiar or certain about a process, they would stop the process or try to change the process. Fernando Rodriguez was not concerned just with Complainant Williams; it was the entire B team. They were calling things safety concerns that he did not feel were safety issues.

66. Danny Brito would visit the line at least twice a week. Whenever he visited the bay or the cell, everybody was working and he never saw any visible signs of problems. No one approached Brito during or after any of his visits to voice a concern. Brito never witnessed any altercations amongst any of the PTs on the W55 program, nor did he ever hear any harsh language or raised voices amongst the PTS. Brito did not have reason to believe that there was any personal dislike between the PTs when they were assigned to the W55.

67. Complainant Rodriguez's only testimony of hostility was "the way they looked at us." He does not remember comments of any supervisors. While Sottile was on the production line, he cannot say for sure whether any of the alleged glares and stares were witnessed by any of Mason & Hanger's management.

68. Complainant McQuay cannot say that he believes anyone in management directed any PTs to be negative toward him. He testified that neither Randy Heuton, Fernando Rodriguez, nor John Barton, all members of the A team, ever made any derogatory remarks to him. He stated that Jim Moore, a member of A team was supportive most of the time. He cannot remember anything specific derogatory remarks he heard personally.

69. O'Neill, a member of team A, never made any negative comments toward McQuay, nor can McQuay recall any comments Stone ever made that were derogatory aside from her comment about losing overtime. McQuay also feels Carry responded to his safety concerns. He thinks Carry is a good man, sincere in his job approach. McQuay also agreed Harter took paperwork to his house when McQuay was sick so that his pay checks would come without delay. Moreover, while McQuay was a union steward at Mason & Hanger he stated that safety issues were handled with sufficient urgency to resolve themselves before going to a formal process.

70. Once the two teams were on line, Long began to suspicion lack of trust between the two. Long addressed this by speaking with both teams. He told his team (the B team) to get in there and learn how this operation was actually being performed

to see if there was any major differences or some techniques that they have learned in the process. Long told the A team that any time you have fresh minds and fresh ideas to open up a little bit and to speak to them and share information. Long did not feel one group was more right than the other nor does he feel the company stonewalled people who tried to raise safety issues. Long felt that the company responded to people when they were raising safety issues.

71. On several occasions, some of the Complainants made comments that insulted A team member DuBose after they came down to work on the line. DuBose heard Williams say, "It doesn't do any good to talk to them; they're brainwashed; they'll do whatever the company tells them to." Williams would also make threats to the effect he would shut the program down. Frequently, Complainant Williams would issue ultimatums to the supervisors. Complainant Williams also would threaten to go to his lawyers. Heuton did not like working with that kind of threat.

72. When Jackovich got down on the line in March, by then there was noticeable tension because of threats the Complainants would make as far as shutting the program down. Additionally, they would say things that would make Barton angry. Jackovich felt Complainant Williams treated her differently because she was a woman.

73. Olguin recalls the PTs' on the W55 being asked by management whether there was anything they could do that would help to work out the differences among the PTs. At some point, Larry Horshak became an engineer on the W55 program and he would come down and talk with the PTs and work with them through difficult operations.

74. Herring addressed issues that were raised to her attention. Long felt Herring addressed anything that was brought to her attention. Further, Long feels McNabb, the engineer was responsive to questions. Long believed Pontius too adequately addressed any issues that were brought to his attention.

75. Long did not hear Complainant Rodriguez raise a safety or health issue on the W55 program. Nor was he aware that Rodriguez ever raised any kind of safety or health issues on the W55. During the course of time that Carry spent supervising the W55 program, neither Byrd, Rodriguez or Olguin ever raised any safety issues to him. The names of Byrd, Rodriguez and Olguin did not come to Angelo's attention until the DOL complaint was filed. DuBose does not recall Complainants Olguin, Byrd or

Rodriguez making any safety complaints.

76. Barton did not hear Rodriguez raise a safety concern. Olguin does not know of any safety or health complaint that Rodriguez raised to anyone at Mason & Hanger other than fellow PTs. At least through February 28, McQuay never heard Rodriguez raise any safety concerns.

77. Heuton was only aware of Williams and Sottile raising safety issues. Though Byrd says he was part of a group that expressed concerns, Byrd did not raise any concerns independently.

78. Danny Brito did receive calls from supervisors on the W55 expressing a frustration about why they had not gotten a chance to address issues raised by the PTs before the PTs went to upper management. Basically, the PTs were going around the chain of command. On other programs on which Brito worked, whenever there was an issue that needed to be addressed, it came to the first line supervisor, who was given the first opportunity to address the issue.

79. Any employee was allowed to “stop work.” Complainant Williams went through an employee empowerment program where he was taught that every employee on the line has a safety right and obligation and would be held accountable for any acts with the weapon being worked on. If problems are not successfully resolved in the view of the PTS, then the PTS have the authority to shut the process down. Brito testified that he would have honored any request for a stop work by a PT.

80. All programs have periods where work is stopped because every PT is trained that when you have a safety concern you stop the procedure right then. Management and supervisors frequently made such statements to the PTS on the W55. Among the managers and supervisors making comments to this effect were Pontius, Archie Lard, Danny Brito and David Cole. Heuton felt that management addressed the safety concerns that he heard raised by Complainants Williams and Sottile.

81. On programs that Heuton had worked on prior to the W55, Heuton had used his stop work authority. Heuton did not feel nervous or afraid to stop the program and nothing ever happened to him that was retaliatory as a result of his stopping a program. At one point in time, John Barton, a PT on the A team, shut down the W55 program. Barton still works for Mason & Hanger and has not alleged any claim of

retaliation by the company. No supervisors or managers demonstrated hostility toward Barton for shutting down the procedures.

82. In response to Complainant Williams numerous concerns when he arrived on line, Long called Herring and related Williams' safety concerns to her. At Herring's request, Long set up a meeting on February 20, 1996, with Carry, Herring, and Williams. The meeting occurred the very same day that Williams had come to Long.

83. Williams raised three concerns. The first issue was the capture of HE tooling prior to rotation, the same issue that had been addressed on the 15th; the second was the separation process of the water and using the face shield; the third was the work performed in the CA (Controlled Area). Carry was taking notes and Herring was trying to explain the process to Williams concerning the safety issues that he wanted them to look into.

84. This meeting was the first time that Williams actually complained to anyone in management about being sprayed in the face with water during the pumping operation. Complainant Sottile had retrieved face masks after the incident. At the meeting, Herring explained that face shields had not been approved in the procedure by the outside review boards and that PTs were not allowed to use personal protective equipment that had not been approved and put in the standard. Herring and Carry told Complainant Williams during the February 20, 1996, meeting that they would recommend having someone review this issue.

85. While they were discussing the issues, two of the Union safety representatives, Sofia De Los Santos and J. C. Clark, came in. They were only in the meeting for the last ten minutes. They asked Williams if his concerns were being addressed satisfactorily and he said, "yes" and that Herring and Carry were going to take care of the issues being discussed. After Williams told the Union Representatives that, he asked Herring if that was what she wanted him to tell them. Herring responded by saying, I do not want you to tell them anything other than what you feel you want to tell them.

86. Carry and Long were courteous to Complainant Williams during that meeting. The tone of the meeting appeared to be relaxed. Herring believed all of Williams' safety concerns had been brought forward, and Long believed Carry and Herring responded appropriately to the issues that Williams raised. Overall,

Complainant Williams seemingly felt good about that meeting and that something good was going to come out of it. After that meeting, Carry immediately began addressing the issues raised.

87. Carry documented the meeting with a memo. (RX 17). Carry contacted Tim Pederson, W55 health physicist representative, and Don Avirett, the W55 industrial hygiene representative, to address the question involving the water utilized in the HE separation process and whether this water posed a threat if it contacted a person. The memorandum, which Williams received, also states that he directed the engineers to include face shields as personal protective equipment during the water pumping portion of the HE separation process. Complainant Williams received this memorandum. In that memorandum, Carry also stated that he would have Pederson address the bagging issue at a “stand-up meeting” on the morning of February 27, 1996. Additionally, they were going to have an expert come from Zone 11 to talk to them and explain the HE. Williams agreed to meet with the expert and listen to what he had to say. Another issue Williams raised was a question about the BZ’s. Carry and Herring told Complainant Williams that they would have the Radiation Department come down and explain the data on this issue to the PTs.

88. On February 23, 1996, a February 22 letter from Williams appeared on Angelo’s desk. (CL Ex. 24, Resp. Ex. 13). The letter said nothing about feeling discriminated or retaliated against because he has raised safety issues. The only concerns that Williams had through the month of February 1996 are reflected in this letter. Williams did not request that his raising of issues, or his letter, be kept secret.

89. When Angelo received the February 22 letter, he paid no attention to who wrote it, but rather whether the issues were being addressed. Technical concerns such as those the letter are addressed on a routine basis. Angelo is not responsible for addressing the issues, but disseminating them to the responsible people.

90. Angelo called Herring to determine if she had been taking actions on the items raised in the February 22 letter, because he recognized some as items that already had been brought up through programs meetings under her responsibility. Herring had not received a copy of the letter, so Angelo sent it over to her and the Training Department on February 26th. Angelo asked Herring to prepare a line by line response to the letter. Herring assigned Carry to look into the new issues raised by the letter.

91. In his February 22 letter, Williams reviewed thirteen (13) concerns allegedly raised in the February 20th meeting. However, as both Long and Herring testified, only a few of these concerns were actually raised at that meeting.

92. Angelo instructed Herring to address all items raised in the letter, even though not raised at the February 20 meeting. On March 4, Herring gave Berman, Richardson and Carry copies of the draft of her response to Williams' letter and sent it to Williams via plant mail. (Resp. Ex 31). Williams agrees that everything in Herring' letter is true.

93. When Carry visited the work area on February 22, 1996, McQuay told him a concern regarding the handling of the HE.

94. De Los Santos and J. C. Clark, both Union safety representatives attended a management meeting on February 23 with Carry, Brito, Britten from Radiation Safety, Long and Herring. Carry discussed what was being done to address Williams' issues, including HE and the bagging operations. At that meeting, management decided to hold a meeting for the entire W55 team to determine if there were other safety concerns that they had not been aware of. De Los Santos thought the meeting was a good idea and any concerns should be documented. Carry said that from that point on all of the meeting would become formal and be documented.

95. Williams admits that the meeting held by Carry on February 27 with all of the W55 personnel was constructive. Management decided everyone on the program would come together and have a say in the process. They invited engineers, radiation and safety engineers, tooling engineers, PTs and managers to discuss the safety issues they knew of and to see if there were any others. They wanted to make sure they made all the changes at once so that they did not have one change adversely affecting the other operations. Carry addressed the entire group with respect to the relationships on the program and also how work had to be conducted in the work area.

96. In this meeting, Radiation Safety came to address a question regarding the contaminated area (CA). They also discussed respirators, dosimeters, the bioassays and the monitoring set-up in the CA. There was a commitment that Britten, in Radiation Safety, would review the process with the person who was doing the training for improvements that could be made.

97. Complainant Williams did not experience any hostile or negative conduct or comments towards him during that meeting. Complainant McQuay does not think that the tone of the meeting was confrontational or hostile, but had more of a tone of problem solving. McQuay did not feel singled out at that meeting. Complainant Williams believed that the company was trying to work out all of the safety and health concerns brought to its attention. However, despite his general satisfaction with Mason & Hanger's approach, Williams made comments to De Los Santos about getting an attorney if they did not take care of his issues.

98. Another meeting was called on February 28, 1996. Carry started out this and all meeting by saying, anybody had a right to raise questions and a right to the resolution to these issues. He told the team that new sets of eyes see things that older ones might not because they were too close to the program. Carry also reminded them that they had a responsibility to "stop work" if procedures could not be followed.

99. Carry directed his questions to everybody in the meeting. Herring does not believe Carry singled out anyone. Olguin agrees that Carry looked at many people when he was answering questions. Olguin did not hear Carry say anything inappropriate or did he hear Carry indicate that Williams was being "put on trial."

100. Management tried to deal with all the safety concerns at once and correct them if necessary. They did not want to have to shut down the program, deal with a handful of safety concerns, and then have to deal with others later. De Los Santos thought the meeting was a good idea. Neither Sottile nor Byrd were present at the meeting. Having all the PTs know who raised concerns was never management's intent in holding meetings. Prior to the meeting, Herring was not aware of any concerns of McQuay. At the end of the meeting, Herring welcomed everyone to see her or Carry privately about any of the issues discussed.

101. The minutes of the February 28 meeting are Respondents Exhibit 19.

102. During this meeting, Moore spoke up about how he was unhappy with the bagging procedure. Carry said that he would agree to have Gary Beck, a tooling designer, go down and look at the bagging procedure for enhancement. Williams asked how long it would take to review the respirator issue and said that the company did not need to stop work over this. Some PTs did not want to wear respirators. Williams did. Carry also talked about tooling, stating that if the tooling does not fit or is damaged, the

employee should stop, tag it out, remove it.

103. Part of the meeting was to find out if anyone felt the need to invoke his/her "stop work" authority. De Los Santos does not believe management was trying to prevent the PTs from stopping work.

104. Complainant McQuay exercised his stop work authority. Both De Los Santos and Carry supported McQuay in stopping the process.

105. After McQuay exercised his stop work authority, Herring came up to him and said she wanted to shake his hand for stopping the program until resolution could be reached and new tools designed. She thanked him for his concern and told him that she appreciated his standing up for what he thought was right. After the meeting Herring also talked with Williams.

106. Carry did not witness abnormal friction or tension amongst the PTS. No members of the A team made negative or hostile comments to McQuay except McQuay overheard Stone curse her potential lose of overtime. When Stone made this comment, Pontius immediately placed his hand on her shoulder and told her to calm down. Stone testified she did not have any resentment over having to stop work to address safety issues raised by one or more of the Complainants concerning use of a bag to capture dust. In fact, Stone actively participated in the training bay to help develop the change that the company ultimately implemented.

107. Complainant McQuay recognized the February 28 meeting as trying to deal with issues that were facing the W55. McQuay believed that Carry had the best interests of the process in mind and was there to solve problems. It was clear to McQuay that Carry wanted the PTS to participate in the solution. At the meetings, De Los Santos was satisfied with management's reaction and believed they were going to address the issues.

108. The next meeting was February 29, 1996, when management requested Roby Enge to come and tell the entire team exactly what the results were from the tests they had taken from the BZs (Breathing Zone Monitors) or any other evaluations they had done on the W55. He gave a presentation about the bagging issue and the technical aspects regarding what they were confronted with in terms of exposure to radiation on the weapon. He explained his concern with respirators. That they would reduce

efficiency and cause employees to be near the weapon for a longer period of time, causing a larger dose of intrinsic radiation. There was a heated discussion between the PTs because some of them were adamantly against wearing face respirators and some of them wanted to wear them. De Los Santos was present at the meeting and thought Enge's presentation was good. The minutes of that meeting are Respondent's Exhibit 20.

109. Herring attended that meeting as well as Carry and the general manager, Dr. W. A. Weinreich. At the meeting Dr. Weinreich verified and supported the stop work and said that the program would not restart until safety issues were resolved. Dr. Weinreich said he thought there were a number of concerns that needed to be addressed before starting up again. He said he wanted all the production technicians involved in solving the concerns. Dr. Weinreich told the teams that there were always ways to improve and asked them to cooperate so they could resolve the issues.

110. At the end of the February 29, meeting, Carry invited anyone who wanted to be a part of the solution to get together with Radiation Safety and Engineering regarding the bagging issue. Complainant Williams thought it was good that Carry made this invitation to the PTs, and that it was a valid position for management to get people on the line involved in the solution.

111. Complainant Williams was satisfied after February 29, regarding the respirator issue. Complainant Williams had no complaints about that meeting or his treatment. He was not treated in a negative or hostile fashion at that meeting. However, Complainant Williams referred to the PTs on the A team as Herring's "puppets" or "guinea pigs." Like Williams, Olguin did not witness any instances toward Williams and never saw McQuay, Sottile, Rodriguez or Byrd being "put on trial." After this meeting, De Los Santos felt satisfied that all issues were being addressed.

112. After the meeting on February 29, two A team production technicians (Barton and Heuton) approached Herring and asked to be removed from the program. Neither Barton nor Heuton mentioned the names of any of the Complainants. They told Herring they were frustrated, that it appeared not every side of the situation was being seen, and they would like to be removed from the program. Herring asked them to come to Dr. Weinreich's office so that they could talk to him. A meeting took place that day.

113. The following day, on March 1st, a group of people, including PTS, Carry, Herring, Britten, McNabb, Collins, and Shimada went on the line to look at the operations involving the bagging issue and try to come up with enhancements. Complainant Williams was part of the group and agrees Shimada is a very intelligent, impressive person. When they took the weapon apart, everyone had their own unique idea of how to overcome the problems. Engineering went to the drawing board and produced their concept of the tooling. Gary Britten actually used his stop work authority and said that he would not let them resume until they got the tooling built.

114. From February 29 until March 4, the cell operations was stopped. Operations did not resume in the cell unit until resolutions were reached for the unit in progress and all subsequent units. Tooling was created and ordered and work resumed in the cell the afternoon of March 4. No new units were processed until the new tooling was received.

115. McQuay agrees that Dr. Weinreich, Herring and management in general were handling things properly after the stop work, and after the restart of work, no other questions and concerns had been raised. In fact, up until March 4, no one had raised a specific concern regarding friction in the workplace to Carry.

116. In February of ;1996, Respondent had also instituted a whistle blower training course for management which was subsequently converted to handling employee concerns training. The training was conducted by Attorney Billie Garde. Approximately 950 people ultimately went through that course, primarily managers and supervisors.

117. The course revolved around resolving conflict in the workplace, training and regarding positive interaction between managers and employees, among co-workers, and communication skills in general. The focus of Ms. Garde's course was how to address whistle blower concerns or employee concerns as they came up, how to categorize them, things to do, things not to do. The class was focused on the company gathering information from the concerned employee, listening to the concerns, investigating the concerns, getting the proper people at the plant involved in the investigation, providing feedback and taking action to resolve the concerns.⁵

⁵ Billie Garde also provided a detailed review of Mason & Hanger's Employee Concerns Program with recommendations of revamping the program and management training. Many of

118. On March 4, 1996, the W55 program was started back up, and PTs were getting ready to go into the contaminated area (CA). Stone was outside of the CA and had been asked by her supervisor, John Pontius, to roll a pump-down table out so that it could be exchanged for a new one. When Stone rolled the table out, Complainant Williams yelled to her not to roll the table out because it had not be cleared by RAD safety. Stone responded that it had. Stone continued to roll the table out, and Complainant Williams yelled at Stone again to the effect of "I told you not to take that table out." Complainant Williams then went to Stone and placed his hand on her arm and said, "Woman, I told you, you don't know what you're talking about." Stone responded that she did. Complainant Williams turned around and Stone was still angry because of Complainant Williams' tone of voice and what he said. Stone yelled back at Complainant Williams, "You son of a bitch, you will not talk to me in that tone of voice ever." Then Stone continued to roll the table out.

119. Complainant Williams told Stone that if she felt like he had done something wrong, she should turn it in. She did just that. Stone went to John Pontius and requested he talk to Williams about touching her when he talked to her and told him that she did not like his behavior. Stone did not ask that Complainant Williams be reassigned because of this incident. Williams saw Stone talking to Pontius and later said to Stone, "This means war; you take it up in your avenues and I will take mine." Stone also told some of the other PTs she was concerned about being threatened by Williams physically.

120. Pontius spoke to Williams about the incident. Pontius told Williams that Stone requested that he not touch her whenever he came to speak to her. Williams told Pontius that he was just trying to get Stone's attention to talk to her over the noise.

121. On March 6, Herring was requested to attend a meeting with a group of PTs from the A team, Barton, DuBose, Stone, F. Rodriguez and O'Neill and Heuton. They allowed Herring to take notes. (RX 27). The PTs gave Herring several instances of behavior that they felt was jeopardizing the safe work environment and some of them invoked their stop work authority.

122. They all told Herring that there was friction in the workplace initiated by a PT down there and they told her about several situations. They said it was hard for

her recommendations were implemented.

them to concentrate on their work. McQuay's name was mentioned regarding a statement that once they fixed this item then we will just find another item. Herring stated that the PT's had concern that they thought Williams and McQuay were trying to prove that the A team was unsafe. When Herring found out some of the concerns surrounded Williams, she explained retaliation for safety concerns would not be permitted by the company.

123. The issue between Stone and Williams was brought up. Stone did not want to be subjected to being touched aggressively, and she said she had been aggressively touched on the upper arm. DuBose was concerned that Complainant Williams had engaged in a hostile act towards Stone.

124. The issues raised in the meeting with Herring were viewed as concerns by DuBose and others, because they involved unusual behavior or action that would compromise the integrity of the work area. One of the PTS told her that Williams is paranoid and scared that it's hazardous. One PT stated that Williams had called him a liar.

125. All of the PTS stated that Williams had threatened them often with a lawyer. Those comments made Barton worry that he might be sued or something he did would be used against him. Barton further did not like the fact that Complainant Williams told him he did not know what he was talking about. Barton was also concerned about Complainant Williams because he would perform some tasks by himself, when it was a two-man operation.

126. One of the issues raised during that meeting was the fact that the PTS at the meeting felt that they could not work with Complainant Williams because he did not want to work with them; they felt that they had tried to work with Complainant Williams and did not know what else to do. They thought he seemed like he was scared of the high explosive part of the program. The PTS felt that Complainant Williams did not like the way they were working the W55 program and that, if he did not want to work it, then he should not be on the program. All of the PTS making the complaint shared a concern that there was a lack of trust in Complainant Williams.

127. The PTS did not feel this way about everyone in the B team. Specifically, they felt they could work with Anne Jackovich well and did so throughout the program. Stone believed that she could work well with Complainant Byrd at the beginning of the

program as well.

128. The PTS who went to Herring about Complainant Williams were not complaining about him because he had raised safety complaints. They were not retaliating against Complainant Williams because of his safety concerns.

129. There was some discussion of whether Williams should be removed, and it was a shared opinion of the PTs that Complainant Williams should be removed. Herring wrote everything down and basically said "We'll see what happens." There was no vote taken to remove Complainant Williams from the program. However, Herring did not feel she had an option to ignore the concerns of the six people.

130. After the meeting with the PTs from A team, Herring called Angelo and informed him what had happened. She told him the operations in the cell needed to stop because the PTs had exercised their stop work authority by expressing nuclear explosive safety concerns. Angelo helped Herring in taking action at that time because she came to him. Prior to his date, Angelo never associated Williams or any other PTs' names with the W55 program.

131. Angelo requested Herring to come to his office that afternoon with Sharon Armentrout, the lady responsible for the Personnel Assurance Program (PAP), and Carry. Armentrout was present because there were some nuclear explosive safety concerns over psychological or emotional stability. Angelo believes that when an employee has a concern, and it has to do with nuclear safety concerns, that is not a matter to deal with lightly.

132. At Angelo's office, Herring basically read her notes from the meeting with the six PTs. The focus of the meeting was the fact that they had some technicians complaining about an individual. This was the first time Angelo recalls any names of individuals. Before this, he knew only that safety concerns had been raised. Angelo did not associate Williams with those concerns. Angelo felt the concerns about Williams went beyond physical touching to concerns about working on a nuclear explosive with other employees. He was also aware that the six PTs had said they could not work safely on the program with Williams. Angelo asked if the PTS felt unsafe working on the program, and the response was "yes."

133. Angelo believes in dealing with an issue firmly and strongly. Angelo evaluated this issue as one of high consequence potential which should be dealt with directly by the general manager, Dr. Weinreich.

134. That day, March 6, management brought to Carry's attention that there was apparently friction that had escalated to the point of a concern by some PTs. When the PTs invoked their stop-work authority for a safety concern about the work environment, Carry did not have any choice whether or not to respond by actually stopping work in that situation.

135. A meeting was immediately held with Dr. Weinreich. The following were present: Robert Rowe, division manager for Human Resources; Jackie Goodwin, EEO representative; Karen Richardson, representing legal; and Berman, Pontius, Carry and Herring. Herring explained to them that there were six (6) PTs who wished to remain anonymous and had voiced concerns about the work environment in the cell. She then read issues from her notes as they had been related to her.

136. One of many issues of concern was the incident between Stone and Williams. Dr. Weinreich had confirmation of this incident from a supervisor in another department, specifically radiological controls, who had observed the confrontation. He had no reason to doubt the event took place. There had been physical contact between Williams and Stone and the touch was unwanted and aggressive. In Dr. Weinreich's mind, this was un-called-for behavior by Williams against Stone, and it was not business as usual. Stone had lodged a concern, though not a written complaint, but to have an employee's concern looked into by Mason & Hanger, there is no reason to file a written complaint.

137. Dr. Weinreich testified he saw the PTs concerns as obviously a cumulation of a number of things that reached a point where, in this case, a group of individuals decided they had had enough relative to their treatment from Williams.

138. At the meeting, it was decided management was too close to the operation and could not be objective and needed to assign an independent investigation team. In the meantime it was decided it would be best to reassign Williams to a program that he was trained and qualified on for a period of time until they could have an impartial group investigate the matter. The transfer would not cause an impact on Williams' income, and in fact would be an assignment to the same program manager to which he

would be assigned when the W55 transferred from engineering from manufacturing.

139. The makeup of the investigation team would consist of a labor representative, Frank George, a representative from manufacturing management and someone from labor relations. The investigation was to address hostility in general on the W55 program and the Stone incident specifically.

140. There was discussion in the meeting of reassigning personnel at the meeting and possibly having it misinterpreted as disciplinary. Dr. Weinreich felt that it was a sensitive situation. There was also a concern that the effected technicians might perceive it as being disciplinary. It was agreed, the transfer was only until an investigation had been completed.

141. On March 6, 1996, a meeting was held with Ashford, Carry and Pontius to inform Williams of his transfer. They asked Complainant Williams if he needed union representation. Jerry Ashford stated that he would be happy to have Complainant Williams back on the W70 program pending the investigation. Williams was qualified to work on the W70 program. Complainant Williams was assured that this was not being done in retaliation for bringing up safety concerns. Carry explained to Williams that this was not any form of discipline, but it was allowing time to investigate the situation.

142. According to the testimony, at the time Williams was transferred on March 6, all safety issues Williams had raised to date had been addressed and he was satisfied with the company's response. Complainant Williams himself testified he would have had no complaints about his removal from the W55 program pending an investigation if Mason & Hanger had removed Stone too.

143. Respondent's Exhibit 31 is a memorandum from Herring to Complainant Williams dated March 10, 1996, responding to his thirteen safety concerns. (RX 13). Williams agreed that everything in Herring's letter is true.

144. Complainant Williams sent his March 4, 1996, letter to Dr. Weinreich, which is marked as Complainants' Exhibit 28 and Respondent's Exhibit 24. The letter was not received by Dr. Weinreich until March 8th, two days after the decision was made to reassign him pending the investigation. Complainant Williams stated he felt he could go to Dr. Weinreich about the issues in his letter, because he had gone to Dr.

Weinreich about issues before and was always pleased with his response. In his March 4 letter, Complainant Williams threatened to sue four of his fellow PTs for \$100,000 each. Complainant Williams also wrote to Herring on March 4, 1996. (Complainants' EX 26; Respondent's EX 23). He did not expect Herring to respond to this letter, and he never asked Herring to keep his letter a secret.

145. The March 4 letter (received March 8) was the first time Williams informed Dr. Weinreich of alleged hostility toward him from the A team. Because Williams' concerns were about employee relations, Dr. Weinreich directed those personnel issues to Employee Concerns.

146. From the outset, Williams' reassignment was intended to be temporary and not disciplinary, while the investigation took place in order to allow the other PTs to go back to work in what they perceived a safe environment. Herring informed the six PTs that there would be an independent investigation, and that Complainant Williams would be temporarily reassigned pending the investigation.

147. A week later, Complainant Williams' father-in-law died. Because of the death Complainant Williams took a leave of absence following his temporary reassignment to the W70 program on March 6, 1996. Complainant Williams was apparently close to his father-in-law and his death was obviously upsetting to him.

148. Dr. Weinreich responded to Williams' letter in a March 8 memo (Resp. Ex 30) advising Williams that he was going to take actions in response to his concerns and had asked Robin McLaurin, the head of Employee Concerns, to investigate Williams' allegations and prepare a report of her findings. He assured Williams that Management would not tolerate "reprisal or intimidation."

149. Subsequently, Ms. McLaurin tried for three weeks to contact Williams so that he could identify his issues and what type of resolutions he expected to resolve the problems. She had difficulty getting him to return their phone calls. McLaurin also sought help from J. C. Clark, Sofia De Los Santos, union representatives, to find Williams. To McLaurin's knowledge, there has been no history of fear on behalf of Pantex plant workers of being retaliated against for raising safety and health concerns.

150. Eventually, Williams came to a meeting in her office. Williams requested McLaurin not to take notes. Williams told her that he did not want Employee Concerns

to investigate his concerns because he already had legal counsel and asked for McLaurin to set up a meeting between Dr. Weinreich, Karen Richardson, herself, Williams and his attorney, which she did. Complainant Williams understood that Dr. Weinreich wanted the Employee Concerns program to investigate his complaints and report directly to Dr. Weinreich.

151. Williams' letter to Herring of March 4th read in part: "we can fix the problems and get back on track with the right goals in mind. It can still be done. I told you the first day we meet, keep it clean and right, and I will be the best PT on your program." (RX 23). Herring took that basically as a threat that Williams would cause trouble because he felt his concerns should have been kept quiet. Herring did not distribute the letter to any PTs or non-management people. Herring, in fact, had not received the letter directly herself, but had received it from Angelo and Dr. Weinreich.

152. Angelo requested John Meyer conduct the independent investigation as decided in the March 6 meeting. Mike Soper, the labor relations manager, and Frank George, who was senior steward for the metal trades council, were also involved in the investigation. At that time, Complainant Williams was a Union member, and George told Complainant Williams that it would be to his advantage to have George on the investigation team because he would then know everything that was going on. Complainant Williams was glad that George had been appointed to the investigation team.

153. Herring framed the allegations. She read to the team the list of notes she had made at the March 6, 1996 meeting and said it appeared there was a lot of friction and tension in the workplace. Meyer was assigned to investigate (1) hostile work environment and the work area which involves the W55 dismantlement process and (2) the allegation that on March 4, 1996 in the cell Williams aggressively touched or approached another employee.

154. The investigation team interviewed eleven persons and at the end of the investigation felt they had sufficient information to answer the questions. Meyer wrote the report and submitted it to Herb Berman. (CX 2). In essence, Meyer found a "hostile" work environment existed in the W55 program. It was his opinion that the A team had been together 18 months and completed 13 units when the B team arrived from training. The B team, particularly the Complainants, questioned the methods being used to dismantle the weapons, raised perceived safety concerns and bypassed

immediate supervisors with these concerns. The report opined that better training was in order.⁶

155. The report also concluded that Williams was not harassing Stone, but Meyer did not find anyone else who shared Williams' concern about her actions on the day of the incident. The report determined Stone was upset about the way she was approached and what was said to her. The investigation confirmed that the incident had occurred, but it was not of a degree necessary to take Williams out of the program. Meyer's concluded it was appropriate to reassign Williams to the W55 program.

156. At Williams' request, a meeting was scheduled with Williams, his attorney, Tom Carpenter of the Government Accountability Project ("GAP"), and Dr. Weinreich on or about April 2, 1996. The night before, Complainant Williams and his attorney, Carpenter, met with George, the president of the Metal Trade Council Union at Mason & Hanger. George informed Complainant Williams that the Meyer's investigation had been completed and gave Complainant Williams a copy of the final report of the investigation.

157. During the meeting the next day with Dr. Weinreich, Complainant Williams' attorney stated that one of the measures they wanted to resolve was Complainant Williams' return to the W55 program. Dr. Weinreich agreed that Complainant Williams would return to the program either the next day or the day after. They also requested a dollar settlement relative to legal fees and the Meyer report. Complainant Williams reiterated that he did not want Employee Concerns to look into any issues. Complainant Williams felt good about that meeting, in part, because he trusted Dr. Weinreich who was leading the meeting.

158. Williams was reinstated by Dr. Weinreich at the meeting on April 2, 1996. That day, Jim Angelo went down and talked to the PTs on the W55 program to tell them that Complainant Williams was returning to the program. Respondent's Ex. 42 refers to the fact that on April 2, 1996 Angelo assembled the W55 team to debrief them on the results of the Meyer's investigation. Complainant Williams was not present at

⁶ Looking back, Meyer later testified he would not have used the words "hostile" environment in his report because it implies incorrectly that there was hostility between management and labor. He wishes he had used the word "conflict" meaning a lack of cooperation between two different groups of people

that meeting. Angelo told them that the investigation found a hostile work environment did exist, but there was no cause to warrant continued separation of Williams from the program. Complainant Williams was told that Angelo said that if there was any retaliation against Complainant Williams for whistle blowing, the person retaliating against him would be disciplined.

159. To address the hostility that had been brought to its attention by the PTs and the Meyer report, the company conducted “Steve Covey” classes regarding the “Seven Habits for Highly Successful People,” which attempted to instruct people how to deal with others and how to understand others’ concerns. There were also some aspects of these classes focusing on other team-building training, such as personalities of the individual. During the team-building training, work on the W55 program was shut down.

160. The PTs were required to attend the Covey training in hopes it would correct the atmosphere. The PTs understood the reason.

161. Complainant Williams was back on the W55 program by the time the team-building classes started. During the team-building training, all of the members of the W55 program were instructed to work together and work everything out so that the project could start back up. Radiation safety technicians, production technicians, industrial hygienists, operations coordinator and David Cole were all present at the team building training.

162. The training for the employees on the W55 program was a specially developed training course that hit on the highlights of the “Seven Habits of Highly Effective People” by Covey, as well as valuing differences and conflict resolution in the workplace. The production technicians on the W55 actually got to formulate the plan by selecting and developing the curriculum that was used.

163. On April 8, 1996, there was a kick off meeting with all supervisors and production technicians including Complainant Williams. On April 9, the training and technologies division prepared a menu of topics from which the PTs selected their training. On April 11 work was suspended on the W55 program and team training and the table top review of standards started.

164. The reason that the team building was done in conjunction with the table

top review of the standards (NEOP) was to encourage teamwork and make safety an issue. Everybody would have input into the procedure. It took place over a period of about 4-6 weeks. They did half day team building and the other half day was spent doing the line by line procedure review of the standards. Cole's assignment from Angelo was to get with Mark Troutman, department manager of personnel development training, to also see what materials he had available that they could use for team building for workers and supervisors.

165. The W55 program was shut down completely during the period the team-building training was going on, and the company took a look at the entire process, including the line-by-line review of the procedures. The procedures were reviewed with Industrial Hygiene, Radiation Safety, Industrial Engineering, Nuclear Explosive Safety and explosive safety experts so that any issues that arose could be addressed by these subject matter experts. Additionally, Management thought it would be best if the PTs would address their own issues and asked the training people to make up training guides to address any issues that were not covered by the existing training material.

166. All of the PTs had a chance to be involved in those changes. Williams agreed that was a good approach. Everybody that participated worked as a team.

167. Respondent's Ex. 116 is a memo by David Cole and Richard Doyle which reports about technical issues and the table top review of standards. McQuay agrees that at the end of the changes it was a better process. The entire group of participating PTs made significant contributions to the whole process during the procedure review.

168. Complainant Williams missed a portion of the Covey training. Sottile also missed two sessions of the Covey training. Complainant McQuay missed a majority of the sessions because of his reserve duty status. When Angelo met with McQuay about the training, he expressed cautious optimism but had reservations because he had not had a chance to fully participate.

169. Complainant Williams told management that he was happy to go through the Covey and team-building classes so he could slowly return to the W55 program. Complainant Williams' only allegation of hostility during the class was that on the first day an engineer used foul language, and said he was tired of putting his name on "shit," and management showed some frustration for being there.

170. Complainant Sottile stated that some people were getting a lot out of the class and were enthusiastic in answering questions. He believed that the principles were good and should have helped the work environment.

171. At the end of the team-building training, Williams and Stone apologized to each other in front of the class. There was some applause. Williams admits the team-building training was an appropriate measure for the company to take to try to get people to get along. Other than the continuing fight that Complainant Williams had with Barton regarding which one of them should leave the W55 program, Complainant Williams cannot specify any other instances of hostility that occurred after he returned to the W55 program.

172. Cole and many of the people thought the team building was fairly positive. A few thought it was negative and some wanted to wait and see. Respondent's Exhibit 48 is a memorandum from David Cole reporting that he thought the team building training put them in "a lot better shape than before." Respondent's Exhibit 51 is a memo written by Angelo regarding his attendance the last day of the team building in which he stated that he was pleased with the interaction and the training group received applause. Angelo concluded that the training was effective and meeting its objective.

173. On May 1, 1996, operations were restarted in the bay. On May 9, 1996, operations were restarted in the cell.

174. About the time operations resumed on the W55 program, a report written by John Rayford for Pantex was published under date of May 6, 1996. (CX 3). It was a root cause analysis of the W55 program. After review of existing facts, the report faulted both the PTs and management supervision for hostility in the work place due in part to poor training, poor communications and lack of understanding on B teams part of both procedure and chain of command. Those conditions deemed correctable were identified and appropriate communication was recommended.

175. After the team-building training, or Covey classes, a lot of the people on the W55 program were better with the situation. Sottile recognized that things did get better. Between the completion of the team building training and November, 1996, Complainant Sottile was able to sit down in the break room with members of the A team technicians. Randy Heuton started talking to Olguin and others in his training group who had gone with him through the training. However, Complainant Williams

told Barton, after the Covey class, he realized the two of them were too much alike and they were never going to solve anything. Williams and Barton each thought the other should be transferred off the program.

176. When the teams begin to intermingle they would have disagreements of opinions and some bickering, but nothing serious. In June or July, the working groups who worked well together were placed together. Rodriguez agrees that the harassment ended then. It also helped because it promoted more productivity. The PTs on the A team worked together, and the PTs on the B team continued working together. David Cole conducted a weekly meeting to ask the PTs if there was anything that they could suggest that management could help to do.

177. After Jackovich went to work on the W55 program following the Covey class, she did not notice many safety issues raised. The members of the A team were receptive to her questions. They helped her understand the process, particularly Heuton and Barton.

178. Following the Covey training Williams approached Pontius. Williams was concerned that people were taking his actions and words in a wrong manner. He and Pontius talked about people's opinions and people's nature and the fact that it is hard for people to change. Pontius told Williams that there were a lot of times when the other PTs would resent it when he would use threats of shutting the program down. For example, when the hoist went down for a few days, Randy's comment was, "if you don't get this repaired, we're going to tag it out and I'll shut the program down." The conversation was Pontius telling Williams there might be a better way to say get it fixed and let's use another hoist. Pontius was trying to help Williams to learn to get along with the other PTs.

179. In Jackovich's opinion, the Complainants would try to bring up something that was not major, like a question about pre-ops, and then they would laugh because they felt that Paul Harter was irritated.

180. In the walk arounds that Dr. Weinreich and Angelo did, they received no negative feedback. Reports were fairly positive.

181. Respondent's Exhibit 76 is a memo from Dr. Weinreich dated August 14, 1996 to Jim Angelo, which attaches a letter dated July 25, 1996 describing issues

raised by Williams which were being addressed. Dr. Weinreich reaffirmed his commitment to work with Williams in resolving these concerns.

182. One of the issues involved a romantic relationship on the W55, which did not involve any of the Complainants. The two PTs were called in management's offices and told that a PAP issue had been turned in against them due to their relationship. The woman did not appreciate someone prying into her personal life. As they did with Williams, while the company was doing their investigation and meeting about the alleged PAP issue, one of the PTs was pulled off of the shift so the two were no longer on the same shift. The issue was resolved when the company decided that their personal life had nothing to do with their work ability.

183. The following safety concerns or issues that Complainant Williams raised with Mason & Hanger were acted upon: the uranium dust spilling out of the unit; cross contamination; explosive tooling; and manual force. Most every issue raised by Complainant Williams was remedied, including other issues regarding production that were subsequently raised by Complainant Williams and which in some instances had nothing to do with safety.

184. Stone and DuBose feel that management was responsive to the safety concerns that were raised by Complainants. She feels that the company did everything possible including bringing in people from HE and Radiation Safety to explain how and why things were done the way they were. Stone would not feel afraid of retribution if she wanted to raise a safety issue. DuBose is not resentful of any changes that were made as a result of these safety complaints.

185. At the time that Complainant Williams was certified, he was asked by the Company if he had any concerns on the W55 program that had not been addressed. Complainant Williams responded that he had no concerns about the W55 program that had not been addressed.

186. ALARA (as low as reasonably achievable) goals are set by the radiation safety department based on historical data projection and characterization data obtained through the first several units. Through this, they determined exposure goals for the program. On the W55 program, they met or exceeded goals for ALARA. Units were removed from the work area by Waste Operations of Mason & Hanger, which is not part of the W55 program. There was a concrete wall between the cubicle where the

cases were stored and the area where the production technician put on the protective equipment.

187. When Olguin mentioned concerns to Paul Harter regarding the number of units in the cell at one time, Harter got people to come package the material and ship it out. They did not have any trouble with them removing the units on the day shift. Olguin brought this issue to Cole once. Byrd never took this issue to Cole. The PTs wanted only one unit in the bay as opposed to two. The question was resolved in Olguin's mind after Cole said that they would start getting three units out before they started another one. Olguin is not aware of any data on radioactive material that supports his position that no more than three units should be accumulated at a time.

188. Cole also responded by calling the radiation expert, Tim Pederson, to request that they characterize the units and find out what the output was. This was done as soon as the issue was raised. The report came back that two cases produced only slightly higher output than one unit and was of no concern. Cole transmitted this information to the PTs.

189. When presented with the issue of having to remain around units when they were not working, management told the PTs to stop any time there was a question about reduced time in the unit. To reduce their exposure, the PTs could go several yards away and still be present in other areas of their work area.

190. There was a voiced concern about a leaky pin puller from Rodriguez, Sottile and Williams. Harter agreed that it should be replaced and contacted that warehouse for replacement. Harter was advised that no pin pullers were available. Harter asked the crew if they would continue operations with the puller until he could obtain a replacement piece. Harter received consent from the PTs as long as he got the replacement as soon as possible. Harter ordered the replacements, but when they came in several were faulty. He got an expedited order, and they replaced the hydraulic pin pullers with a mechanical one until they could fully repair the hydraulic one.

191. There is a joint status board that lists critical systems maintenance which is due. The PTs are required to check this board prior to entering the bay. It is set up for a week at a time in columns. The board they were using was the same kind that had been in existence since Cole had responsibility for the W55. On the week of Monday, September 30, the PTs went on Monday and did their work. The next day, October 1st,

Harter got to the bay and the technicians brought it to his attention that it was October 1st and the status board said week beginning September 30. They refused to go in because the status board was in error. Harter was confused because it was clear that their training tells them that the board ran for a week at a time. The issue had never come up before.

192. This issue does not relate to safety of units, just that the “safety envelope” could possibly be in question if the maintenance had not been performed. There was no maintenance due at the time of this incident. Cole responded by having Chris Hoops, the facility manager, come explain that just because October 1 fell in the middle of the week, the board, was still good for the entire week.

193. The PTs accepted the explanation, but upon entering the bay informed Harter that the eyewash was not serviceable. Harter looked at the eyewash and the needle was not in the yellow band which would indicate it was not serviceable, it was on the edge of the black band separating the yellow and the green. Harter concluded that it was serviceable. Some people who looked at the gauge said it was fine for working, others said it was not.

194. Harter contacted Cole who came down. A Union representative was also contacted. Because it was borderline, the union rep said “if the PTs don’t think its in the green then we need a new eyewash.” A replacement was obtained in five minutes and, though it did not look as good as the previous wash, the PTs accepted it and went to work.

195. Complainant Byrd states that he did not personally notify Harter of the problem, “we notified him.” Harter felt that he was receiving retaliation from the technicians because he had told them to go to work after the status board incident. .

196. Moore described an incident where he reached across the rope of the contaminated area to catch a stand. Moore had set it back up without swiping it. Olguin complained about Moore’s actions. Moore stated “Just either call somebody and get something done or shut up about it.” Moore ended up in a meeting in Danny Brito’s office with David Cole, Danny Brito, Norman Olguin, and Jerry Ashford. The meeting was to settle the matter. Management agreed Olguin was correct that the stand should have been swiped after the incident.

197. Brito and David Cole received a report from either Complainant Rodriguez or Complainant Olguin stating that a racial slur had been made by Moore in the cell concerning a Mexican. The remark Moore allegedly made did not use either persons name. Olguin is unaware of any kind of run in or confrontation that ever occurred between Moore and Rodriguez. Cole told Rodriguez he was concerned, and he would take care of the situation. Cole followed up by visiting with Moore and telling him someone had accused him of making a racial slur. Moore denied the remark. Cole said that comments like that would not be tolerated.

198. Complainants Rodriguez and Olguin requested to be moved from the cell area to the bay area. They were subsequently moved. Olguin agrees that Cole handled the alleged racial comment appropriately. Neither Complainant Olguin nor Complainant Rodriguez made another complaint about Moore. Moore continued to work in the cell, and Rodriguez never worked again with Moore.

199. At a subsequent “stand-up” meeting, Brito made it clear to everyone that they would not condone that type of behavior. Brito also counseled Moore that that type of behavior would not be condoned. Brito himself is Hispanic.

200. Angelo made a statement of understanding or responsibilities associated with the pre-operational checklist which the PTs signed and acknowledged. McQuay complained to Danny Brito regarding his inability to perform the pre-operational checklist due to an inaccurate photograph of the gauges of the fire deluge system. The gauges were on fire risers which were built the same way at the opposite side of the building, but mirror images of each other. The photograph that was used was taken on the other side of the building.

201. Danny Brito came with Chris Hoops, the building manager. The PTs had been using the same photo to do pre-operational check lists since they started on the program. Hoops did not understand why the PTs were suddenly concerned. Brito agreed to get another photo made that day. The fire system photograph was not a stop work issue.

202. In November McQuay was working on a unit and encountered crushed detonator cables. Bill McKaskle reported the situation to Harter, and McQuay states he also informed his supervisor, Harter, that the cables presented a “situation.” Harter responded. Harter agreed that it was unique and called Danny Brito, the operations

coordinator, who called McNabb, the engineer. McNabb consulted with Eddie Collins, the nuclear explosive safety engineer who told McNabb that it was a normal situation and it is not a concern from a safety aspect. McNabb told Brito, by phone, that they had data supporting the fact that this was not a problem and they could proceed with dismantlement operations. McNabb did not order the PTs back to work over the phone. He has never seen PTs ordered to work at Pantex if they were uncomfortable continuing an operation. This was the fifth or sixth incident on the W55 where they had a cut or smashed cable. McQuay told Harter that was not satisfactory and he wanted the engineer to come down to the work area. McQuay said he was going to stop work.

203. Within fifteen (15) minutes, Ernie McNabb from engineering and Eddie Collins from nuclear explosive safety came to the area. They looked at the situation, discussed the options with the technicians. They made several log book entries. Then they proceeded through the operations with the engineers present. Rodriguez agrees that, in the end, there was no safety concern.

204. Action plans were developed in the W55 program as an effort between the number of different divisions to address the team building issues, the friction issues, the reintegration issues, and the other technical issues that the team building had raised. Respondent's Exhibits 62 and 79 are drafts of the W55 Action Plan. Cole reported to Angelo regarding completion of corrective actions in the action plans. Respondent's Exhibit 87 is a memo from Jim Angelo regarding the Action Plan, it confirms each of the actions were actually done. As far as Cole knows, all of the items from the Action Plan were completed.

205. On one occasion, when Danny Brito made a comment about reassigning Complainant Williams, Carry immediately said, "We won't do that, that it is not an option, and we won't even discuss that." Respondent's Exhibit 118 references disciplinary action against Danny Brito regarding the comment that was made by him. It reflects that Brito made a comment that was inappropriate, and reflects that Brito was counseled by Roten.

206. Angelo counseled Dody personally on an inappropriate statement he had made referencing Williams. Angelo recalls that someone had asked where Williams was, and Dody responded by saying "he's not here, he died of radiation." Angelo believed the remark was inappropriate because it appeared flippant about safety.

207. Harter was disciplined regarding a comment he made the day Williams quit. It did not have anything to do with the fact that Williams quit. Angelo felt Harter's venting his frustration at the DOE in the presence of PTs was inappropriate. Harter was removed from his duties and placed in a position in which he has no supervision of PTS.

208. Between the April 1996 meeting with Williams and June 28 of 1996, Dr. Weinreich did not hear from Williams or his lawyers about any type of continuing hostility or harassment against Williams. Dr. Weinreich had not received any reports from anyone that there was continuing hostility or retaliation against Williams. Dr. Weinreich saw Williams occasionally and would ask him how things were going and his response was "good."

209. At no time did Williams or his attorney tell Dr. Weinreich he should be doing anything different than what he actually did to address Williams' problems. Moving everyone from the W55 program would not have been a feasible alternative. Dr. Weinreich believed that the best way to resolve problems was to face them head on instead of pushing them aside.

210. After receiving a June 28, 1996, memo from Frank George (CX 63), Dr. Weinreich met with Williams in July to discuss the issues raised. At this meeting Williams did not complain to Dr. Weinreich that he thought he was the subject of continued retaliation or harassment at the company. Some of Williams' concerns involved events that had taken place off premises, including a confrontation in a bar and an article appearing in the New York Times. Also, in July of 1996, Complainant Williams was accused of copying and removing classified information from the plant. Security informed DOE who in turn informed the FBI. It was determined that this was a security issue only, not a counter intelligence matter. The FBI never interviewed Williams.

211. Respondents' Exhibit 65 is a July 3, memo that Dr. Weinreich drafted in response to Williams' request for a memo on addressing the rights of people to raise concerns. The memo was sent to George for him to review with Williams. One week later Frank George informed Dr. Weinreich that Williams was going to get back with him by memo. About one month later Dr. Weinreich sent another memo directly to Williams to try to address the issue. He requested Williams review it and make changes as he believed appropriate. This is reflected in Respondent's exhibit 77.

Williams never got back with Dr. Weinreich.

212. Respondent's Exhibit 71 is a memo dated July 25, 1996 reporting the status of employee concerns that Williams raised. Each of the issues in Respondent's Exhibit 71 was addressed. Dr. Weinreich did not hear back from Williams that the Company had not acted properly on any of those issues. Williams filed his OSHA complaint July 26, 1996.

213. In response to the complaint filed by Complainant Williams, Vince Noonan, an expert in the Nuclear Industry field, was asked by Mason & Hanger to do an independent investigation into employee concerns and issue a report. Complainant Williams concurs that this was an effort by Respondent to address the work environment. There was a list of people that were potentially acceptable to Mason & Hanger and GAP, Williams' attorneys, and Noonan was chosen from that list. Noonan understood that GAP was also supportive of his doing this investigation.

214. Noonan attempted to address every complaint that Williams raised and issued a 29 page report. (CX 4; RX 80). During his investigation, he gathered documents and conducted 28 interviews. He spent about two weeks performing the interviews. Noonan focused on the A and B teams.

215. As with the Meyer report, Noonan found there was hostility between the two teams. The A team thought they had already gone through the process for a year and one-half. They had developed the procedures, and they felt they had answered all the questions. "So in a sense they were not hostile because he was raising safety concerns, they were hostile because he was dragging up things they thought had already been resolved and put to bed." Complainant Williams agrees that at least fifty percent (50%) of the reason for the alleged hostility by certain of the members of the A team was due to the fact that they took pride in the program that they had helped develop and felt that others were trying to change the process.

216. Noonan found that Williams did make remarks to production technicians that contributed to their negative feeling toward him, *i.e.*, he made comments about getting a lawyer and shutting the program down. Noonan found those statements intimidated and made the other PTs angry. There were times when Williams told people that they were screwing it all up, doing things wrong. This also contributed to negative feelings by the PTs toward Williams. Noonan found Williams had trouble

accepting the opinions of experts as well as their resolutions of the problems he raised.

217. Noonan concluded management looked at a lot of Williams' safety concerns and made changes to the process where they could. In fact, a number of Williams' issues or safety enhancements were adopted by management. Most of the issues Williams brought up were more of safety enhancements than concerns, because they were not necessary to the safety of the program. Management sometimes felt the changes were worthwhile and often implemented them to keep peace among the employees.

218. Noonan believes first line or on-line management (operation managers) did not have the slightest idea how to deal with the PT conflicts. This confusion, however, was not directed at Williams nor was it discrimination against Williams, and Noonan concluded the supervisors and upper management acted appropriately once they found out about the alleged hostility.

219. He did not fault senior management at all. He believed that senior management acted promptly to try and remedy the issues that were arising. Angelo took immediate action on hostilities that went on when he was made aware of the problems. Noonan never heard or saw anything that would indicate management retaliated against Williams.

220. There is no way the company could have known how many people would or would not take the team building training seriously. Noonan does not believe the training program was designed to retaliate against Williams. Noonan did not find a historic pattern of intimidation of whistle blowers by Mason & Hanger.

221. Noonan's opinion, based on his experience in the nuclear industry, is that respirators should not be worn unless they are absolutely necessary. The technicians cannot hear or speak loud enough to be heard while wearing respirators. If they loosen the respirator in order to be heard that would violate the purpose of the respirator.

222. Noonan also concluded that Williams' temporary transfer to another program was not retaliatory. It was done while the company looked into Stone's allegations so they could either take action if deemed appropriate.

223. The harassment Noonan found was "peer harassment" from other PTs. He

blamed the PTs for creating a hostile work environment. As far as intimidation, he felt Williams himself contributed with threats of his “lawyers and shut downs.” He found no evidence of interference with Williams’ legitimate duties nor that Williams was intentionally humiliated. Finally, he found no retaliation on the part of senior management.

224. The recommendations made in Noonan’s report (classes, meetings, communications, training) were all followed and implemented by the company. After the Noonan report weekly meetings were resumed with the program team, operations managers and Cole. Following Noonan’s investigation, Mason & Hanger set up a Joint Counsel for the resolution of employees complaints. This was done with the assistance and input of Noonan and Claimant’s attorneys (GAP), and the company agreed to be bound by the recommendation of the panel. Members of the counsel include Noonan, Billie Garde and attorney Tom Carpenter of GAP.⁷

225. In July 1996, prior to the Noonan report, Mason & Hanger had added some additional courses to make up the 40 hours on subjects like gaining commitments and collaboration, helping employees succeed, helping employees adapt to change. Fifteen hundred (1500) employees have gone through the training and more are scheduled to receive it. The four hour course for all employees was scheduled to be completed in September and the courses for first line supervisors and mid-level managers was scheduled for completion in July or August.

226. The company also started putting team-building classes in the general employee training that all employees receive, the purpose of which was to get people to work as a team. This is to prevent future hostility issues like those which occurred on the W55 program. The company sent management to special meetings where they learned how to deal with these types of situations, and tried to train its supervisors.

227. Respondent’s Exhibit 9 entitled “Mason & Hanger - Silas Mason Co., Pantex Plant Bulletin, September 12, 1995,” states that employees are protected from retaliation for raising safety and health complaints. This was always the company’s official policy.

⁷ At some point, GAP had asked Noonan to testify on Complainants’ behalf in this litigation, but costs became a factor and Noonan was called as a witness by Employer.

228. Noonan too was involved in the formation of the Joint Counsel and did this with the input of the GAP. Both GAP and Mason & Hanger felt it would be a good way to get employee concerns resolved quickly without going through litigation. Attorney Carpenter of GAP had considerable input on who was to be put on the Counsel. The Joint Counsel is to supplement the Employee Concerns Program. The Employee Concern Program is something that is required by the Department of Energy order.

229. Complainant Williams too supports the Joint Counsel because it is an internal procedure, without publicity of being called a “whistle blower,” it does not cost the Complainants any money, it utilizes outside sources for investigators, and it will resolve complaints like those raised herein.

230. In response to criticism that Employee Concerns Program was not independent, Dr. Weinreich removed it from reporting to Human Resources and had the program report directly to him.

231. Ms. Billie Garde suggested the Employee Concerns Program should have independent investigations so that the organization responsible for the issue is not involved in investigating itself. That suggestion was implemented. For technical advice they could either go to the experts from Environmental Safety and Health or Nuclear Explosives Safety.

232. Complainant Williams admits that the only issue left unresolved at the time that he terminated his employment was the issue of the hostility. However, Williams does not know what the company should have done or could have done to try to decrease the hostility in the W55 program, other than what was done. Complainant Williams has no opinion as to how to handle the hostility he was alleging. Complainant Olguin has no idea what the company could have done differently to make people behave differently. Rodriguez cannot say what he proposes or what should happen to rectify the situation. Byrd recommends management reorganization.

233. The final OSHA decision concerning Williams was issued on November 21, 1996. In reality it tracked Noonan’s findings, and, frankly, I find it doubtful that OSHA conducted an independent investigation.

234. When the OSHA decision came out, a security guard told Williams that on

orders from Dr. Weinreich she was going to be with him and to stay within hollering distance.

235. Respondent's Exhibit 99 is a letter that Dr. Weinreich put out to all employees regarding the Department of Labor Notification. He specifically emphasized how "our actions and words affect those working around us." He stated that they had been working to resolve hostilities through use of team building, regular meetings and additional supervisor training. He also wanted to remind everyone that safety was a top priority and that everyone had a right to voice concerns without harassment or retaliation.

236. Williams quit work November 27, 1996. At that time the W55 program had two units left to dismantle. It was both the PTs' and the supervisors' goal to finish those two units before Thanksgiving.

237. Harter was Complainant Williams' supervisor at that time and had the authority and right to give orders concerning the work.

238. The remaining PTs were discussing how the last units were going to be handled. Sottile, Rodriguez and Williams said they would take care of them and get the job done as quickly as possible. They asked Harter to be present the next morning to help get pre-operational checks. They asked Harter to hold a brief A.M. stand up meeting so the technicians would get to the bay. Harter and the PTs were in agreement. The next morning, November 27, a brief stand up meeting was held and everybody went to their assigned work areas.

239. Williams was assigned to get the keys to the bay. Harter offered his bicycle to Williams to expedite the mission. Williams said he could not use the bicycle, and Sottile offered to walk with Williams. While Sottile and Williams were getting the keys, they stopped and talked to a Department of Energy representative and another group of PTs.

240. Rodriguez had already removed one lock and all were waiting for Williams and Sottile to return with the other key so they could call in for access. They waited for 15-20 minutes and Harter left to go do paperwork. When Harter returned to the area, Sottile and Williams were sitting outside, but Harter had to go get Rodriguez

because by then he had gone on break.

241. Harter was obviously irritated because he felt they had given their word that they would try and get the job done rapidly and then Williams and Sottile took their time getting back. Complainant Williams knew Harter was mad because he and Sottile had taken so long in returning to the work area.

242. Williams told Harter the DOE stopped to talk to them. He asked Harter if he was upset. Harter said “no, not at you guys, I’m upset with the DOE rep for delaying you guys.” Harter said, I wonder if we can charge DOE with the downtime for delaying you guys. This statement indicated to Complainant Williams that Harter was annoyed with the DOE for keeping he and Sottile from getting the keys and getting back to the work area.

243. Williams too became upset and told Harter to get off it. Harter did not understand what Williams was referring to and Williams became more irritated and starting causing a scene. Specifically, Williams said to Harter, “Paul, don’t go there” and then told Harter to quit making the push for production because they were going to finish the units. Harter said “look, if you want to discuss this we can go to the office and discuss it up there.”

244. Harter then asked Williams to open the bay so that Sottile and Rodriguez could start the pre-ops. Complainant Williams at first did not respond, but continued walking away from the work area. Complainant Williams then turned around, walked past Harter, and told Harter that he would not unlock the bay. Williams responded, “I don’t work for Mason & Hanger anymore.”

245. Williams’ comment that he was quitting surprised Sottile because he did not realize that Williams was that upset. Sottile does not have any idea why he reacted the way he did. Harter, as well, was surprised at Williams’ reaction to this encounter. Harter could not understand why he should be so upset over something that was not directed at him.

246. Complainant Williams contends that there was an atmosphere of retaliation shortly before he resigned. He contends that this atmosphere of retaliation consisted of having to go to management at Mason & Hanger with safety issues; having the entire W55 team go to the Union and have meetings with management where management

and the Union tried to work things out; and some front-line supervisors being resentful. However, when Williams walked off the job November 27, 1996, Dr. Weinreich had not received any reports from Williams, his lawyers, or anyone that there was continuing hostility or retaliation against Williams for raising safety concerns.

247. Complainant Williams stated he walked off the job to keep from getting in a physical fight with Paul Harter. Complainant Williams felt that losing his temper was the next step and thought that his discussion with Harter was getting to a point where he had to control his temper.

248. Three work days had passed from the time Williams received the OSHA decision until he walked off the job.

249. Respondent's Exhibit 93 is a letter Dr. Weinreich sent to Williams expressing disappointment that Williams had resigned and urging him to reconsider and return to work. Dr. Weinreich wanted to talk to Williams to see if there was any way to resolve whatever issue he might have and offered for him to return to work. Dr. Weinreich did not condition Williams' coming back to work on his dropping his complaint with the Department of Labor.

250. Respondent's Exhibit 96 is a letter from Randy Williams to Dr. Weinreich saying that he "would be glad to return to the plant as long as his complaints were satisfactorily resolved, his attorneys paid and his continued abuse brought to an end." Dr. Weinreich felt that they had satisfactorily resolved Williams' complaints long before he received the letter.

251. The W55 program was concluded in December 1996. Cole, as well as Brito, were involved in making decisions where PTs on the W55 program were going to go when the program ended. When Brito realized in November of 1996 that they had more PTs than they had work, Cole and Brito temporarily assigned some PTs to whatever work assignments were open.

252. Some production technicians were assigned to Howard Allen in Facilities. They could either work on backlogs of parts or components or find work for them with the facility managers if they needed some clean up or material removed. It is customary at the Pantex plant to ask a PT to sweep or clean any area where they work, and that is considered part of a PTs' job.

253. On prior programs, Brito has assigned PTs to sweep ramps when there is no other work to be done by them. All of the ramps at the Pantex plants are heated; some are cold, but not unbearably. Complainant Rodriguez was detailed to clean up other buildings in the past, including sweeping ramps. In that assignment, they just swept ramps, moved boxes, or cleaned up a bay, or whatever they needed done. He acknowledged that this is typical of what happens at the end of a program.

254. In later November 1996, Brito started transferring PTs off the W55 to work in other areas. Four (4) to six (6) PTs stayed to finish the work on the program, which included cleaning up parts and paperwork. Totally, there had been about seventeen PTs on the W55 program. Cole left Sottile, Rodriguez and Williams on the W55 program the longest of all the production technicians. If Williams had not quit he would have been with the W55 process to the end. Brito, at that time, transferred DuBose to another area. David Gragg, Olguin and Anne Jackovich were assigned by Cole to the 69 program. Byrd was assigned to the 69 program on approximately November 3rd or 4th of 1996. Moore, with several others, was pulled off the W55 program and assigned to a building manager in 194.

255. Anne Jackovich, Tom Byrd, Steve Sottile, Gilbert Rodriguez and Normal Olguin are production technicians currently working on the 69 program. D. W. Gragg was also assigned to the 69. McQuay was assigned to David Cole's program. There is good communication on the 69 program. The supervisors are Holly Scull and Rustin Long and they are responsive and listen to any problems the PTs have related to work. Sottile believes that Rustin Long and Holly Scull "are the best team he had ever worked with." Rodriguez does not have a fear of retaliation on this program that he is assigned to.

256. On the 69 program, the first instruction they received was to sit down and go over the weapons briefing. Specifically, the engineer wanted them to add in some steps and asked Olguin to catch anything that might need changing to bring it to the supervisor, Holly Skull's, attention. Since the W55 program ended, communications between management and supervisors and production technicians have improved. Olguin believes the whole 69 program is going well because of this communication.

257. Currently on the 69 other production technicians (non-complainants) have expressed concerns to Long that the four (4) Complainants on the program seemed to be meeting or collaborating. As they walk by, the Complainants get quiet and they do

not know if they are talking about them or someone else. The PTs on the program are intimidated by the Complainants in this case. They are concerned that if they try to raise an issue that does not agree with the Complainants that they will be in the same situation as this current litigation. Dr. Weinreich has listened to their concerns. When Jackovich told Rustin Long about her feelings, he suggested she address it with Employee Concerns. Some PTs on the 69 have filed concerns with the Employee Concerns Program.

258. Byrd testified that recently in a team building class, the instructor said the training was necessary because they have too many whistle blowers. This statement was brought to Rowe's attention by the legal department in conjunction with receiving the pretrial order in this case. Rowe discussed it with the trainer's manager and asked him to investigate it. As a result, the instructor received a letter of counseling and has been suspended from actively participating in instructing such courses until such time as they have confidence in the trainer's ability to avoid insensitive type remarks.

259. McLaurin received a message on the employee concerns hotline which said that there was a note on a table that said "Reserved for Whistle Blowers." This occurred in January 1997. Byrd did not report the sign to anyone. Sottile had reported the sign to Chad Veneble, investigator in the Employee Concerns office. They did not keep nor could not find the note, could not identify who had written the note and had no evidence that there was a note. The concerns department contacted Complainant Sottile, requested him to make a statement, but he did not provide one.

260. Complainant Williams has not sought employment since November 27, 1996, other than that connected with his own heating and air conditioning business. He owned the business before he went to work for Mason & Hanger. Williams hopes he will be able to build his business back up to where it was when he went to work for Mason & Hanger.

261. Complainant Williams told the employment office at Mason & Hanger that he would not be interested in returning as a PT. Despite the fact that Williams does not believe it would be possible for him to return to Mason & Hanger at the Pantex Plant, Complainant Williams told the employment office that he was interested in working in the Employee Concern Department. The employment office explained to him that they were only taking internal applications for such a position.

262. Complainant Williams feels that Sixty Thousand Dollars (\$60,000) would be appropriate damages for his alleged emotional distress, humiliation, and retaliation because this is the request that he made initially of Mason & Hanger to resolve and stop the litigation process. The basis for the \$60,000 that Complainant Williams is seeking is emotional damages. Complainant Williams initially made the demand for some type of monetary damages to Dr. Weinreich.

263. During Complainant Williams' PAP evaluation with Mike Ward on October 8, 1996, Complainant Williams told Ward that there were no significant events going on concerning him. Complainant Williams also told Ward that he might quit Mason & Hanger early the next year, in part to pursue drag car racing.

264. Complainant Sottile was working on the 69 program at the time of the trial. Sottile is not claiming any source of stress from his current work situation.

265. Sottile has been diagnosed with a hiatal hernia. The ibuprofen he was taking for his neck injury irritated his stomach.

266. Sottile recalls mentioning stress in 1995 to the Mason & Hanger psychologist, but that would not have involved stress related to the subsequent W55 project. His stress there was related to "supervisory stuff." He did not understand why he had to do it the way Pontius was asking them to do it.

267. In June of 1996, at his annual physical, Sottile told a Pantex's doctor, "I feel great. All conditions are under control." He denied any stomach problems. Sottile denied nausea, heartburn or vomiting.

268. For a period of time Sottile was having a problem with his child, and he was agitated about it. His supervisor, Harter allowed Sottile to spend periods of time on the phone calling people about the situation because he was under some stress.

269. During the W55 program, Sottile also told Long that his child was having some problems at school and was having to meet with school board members to try to get it cleared up. Sottile told Long that it was stressful to him and his wife.

270. The first time Sottile saw a psychiatrist, Dr. Rogers, was the day after his first discovery deposition in this litigation. The second time he saw Dr. Rogers was

May 29th, the day after the second day of the deposition. He continued his visits because of stress related to the litigation. Sottile's stress was partially associated with the notoriety of the case.

271. In the Summer of 1996, Sottile applied for two promotions which were in the Manufacturing Division. When Sottile arrived at the interview with David Cole for the first job, he was told that they had changed the position and had already filled it. They were then interviewing for Operations Manager. The position had been filled by Valynn Smith, who already was an Operations Manager at the time. Sottile admits he does not have any evidence that his failure to get a promotion was in retaliation for any safety complaints. He seeks \$75,000 - \$100,000 in damages in this case.

272. Complainant McQuay believes that in the early 90's the company did a fantastic job of brainwashing people to believe that if they did not work fast the work would go away. McQuay refers to people who were hired at that time as "model prisoners." McQuay believes Dr. Weinreich is a silver tongued liar. McQuay does not trust Mason & Hanger management because he thinks they have lied to him in the past.

273. In 1990, McQuay was subjected to a reduction in force (RIF) and he had to take a \$10,000 cut in pay when he was bid back in as a PT. At that time McQuay was a plaintiff in a lawsuit alleging age discrimination as a result of the RIF. Since that time McQuay has distrusted data provided to him by Mason & Hanger. His current job involves normal working conditions.

274. In 1991 McQuay was diagnosed with ulcers and nausea. McQuay also had colon disease in 1991. In July 1996 McQuay was again diagnosed with an ulcer, this time bleeding, and was given Zantac. McQuay has had stomach disorders in the past and has had flare ups from time to time. He says he now suffers emotional distress including depression.

275. McQuay seeks \$108,000 in damages. He explained this would cover his next two years wages and would allow him to retire now rather than wait until he was 55 years old. When asked if he would be satisfied with any kind of management commitment, he responded that the only thing he would believe in would be cash in his bank account.

276. Complainant Olguin has suffered with psoriasis in the past. He first went

to see a dermatologist in 1985. He had a problem with it when he was working on another program. In the summer of 1992 Olguin began intensive treatments for psoriasis including steroids and ultra violet treatments. The treatment that Olguin was undergoing, Puva treatment, upset his stomach and gave him headaches. This occurred when Olguin was working on the 57 program in 1991 or 1992 where he worked for approximately 2 years. He said his stress on the 57 program was due to his having to deal with Willis Anderson. The reason Olguin left his previous Employer, Iowa Beef, there was too much pressure at work.

277. In April of 1996 Olguin was given a prescription for Fen-Fen to help him lose weight. The only pressure Olguin is feeling now is stemming from this lawsuit. Olguin admits that if on the certification exam and questionnaire, Cole had asked him if he had problems or concerns that were not addressed, he might have said no.

278. Several months ago, Olguin made a comment to Jackovich about his logbook, when she asked if her name was in there Olguin replied that it may be and it may not be. Jackovich said "Well, is it there or not?" He said "Your initials could be." Someone else made a comment, and he said "This book is going to get me a boat." He seeks \$100,000.00 plus medical expenses.

279. Complainant Byrd complained that the A team would not talk to him much or they would not have anything to say to him at all. He also believed two of the A team members were having an extramarital affair and it made him tense. Also contributing to Byrd's tension on the line was the fact that he had never worked on a nuclear weapon before.

280. Byrd attributed his following medical problems to stress: Viral Infections, upper respiratory infections and the herpes simplex virus. Byrd had viral infections before he worked on the W55. He attributes no other symptoms to his stress and has never been diagnosed as having depression. Byrd requests \$50,000 in damages.

281. Gilbert Rodriguez requested \$50,000 for emotional damages though he did not testify to any symptoms or basis for these damages.

Conclusion of Law

Before addressing the issue of whether or not Complainants were victims of

retaliation; two questions raised by me sua sponte must be addressed. At the hearing, I inquired whether or not the Complainants, other than Williams, had filed timely complaints and whether or not these same five Complainants had waived any claims for relief not included in OSHA's determinations by failing to appeal the OSHA decisions.

Timeliness

As to the issue of timeliness, the Act provides a 180 day time limitation for filing complaints. The time starts with the date of the discriminatory act except where the discriminatory act is of a continuing nature. The time limitation in the latter instance does not begin to run on the occasion of the first act.

In this instance, each Complainant seeks relief for being subjected to a hostile work environment. Individually, Complainant Sottile seeks relief for an unlawful transfer in November, 1996 and being unlawfully denied a promotion in the summer of 1996; Complainant Williams seeks relief for an unlawful transfer in March, 1996 and being constructively discharged in November, 1996, and Complainants McQuay and Rodriguez seek relief for being unlawfully transferred in November, 1996.

Based on the allegations of the Complainants, the hostility alleged was ongoing in nature, and it is my finding that the Complainants' complaints filed in November, 1996, were filed within 180 days from events which they maintain support their claims in this regard. As to Complainants McQuay, Rodriguez and Sottile's claims of unlawful transfer, that allegedly occurred at the conclusion of the W55 program and in close proximity to their complaints being filed; obviously, this issue was not time barred. Likewise, Sottile's separate claim that he was passed up for promotion occurred within the 180 day period prior to the filing of his November claim. Finally, as to Complainant Williams' individual allegations, his July claim and his subsequent amendment were timely filed regarding both his March, 1996, temporary reassignment and his ultimate resignation in November, 1996.

There appear to be no other specific events for which Complainants seek regress, and I find that their complaints regarding the issues enumerated were timely filed.

Appeal

Except for Williams, the other five Complainants never “appealed” and/or sought a hearing from the determinations of OSHA regarding their respective complaints; though a hearing was sought by the Respondent which led those claims to the Office of Administrative Law Judges where they were consolidated with Williams’ complaint for formal hearing.

The determination letters issued by OSHA as to these five Complainants (AR Ex. 2-6), state that a fact-finding investigation could not be completed, but the conclusions were drawn that these Complainants’ concerns were an extension of Williams’ complaint which by then had been assigned to the Office of Administrative Law Judges. Merit was attached, or inferred, to the complaints based on the prior decision made in the Williams’ case and the same remedy was prescribed:

Respondent is ordered to abate the hostile working environment by continued use of existing or new and enhanced interpersonal human relationship type programs which are designed to achieve harmonious working environments, or negotiate an amicable work related, and/or substantial monetary resolution of the matter with complainant.

As stated, Respondent appealed each of the five determinations, the five Complainants did not, and the five complaints were referred to the Office of Administrative Law Judges where, by agreement of the parties, they were consolidated with the Williams case which by then had been set for hearing on March 31, 1997. (The hearing was postponed, by agreement, until June 23, 1997.)

Based on the foregoing factual scenario, as well as a reading of the regulations, it is my finding that Complainants had no obligation to request a hearing regarding OSHA’s determinations, particularly in view of the fact that Respondent made a timely request.

Frankly, it is questionable that OSHA actually issued an “appropriate” order regarding these five complaints. Regardless, the regulations place a burden on the Complainant to seek a hearing only if the complaint is found to be without merit, and that was not the situation here. The complaints were “determined to have merit such as was found in the original case,” and Respondent’s request for hearing was sufficient

pursuant to 29 C.F.R. §24.4(d)(3)(i) to bring the matters before the Office of Administrative Law Judges.

Alleged Adverse Actions

In cases such as these the burden rests on the Complainants to prove by a preponderance of the evidence that they were victims of retaliation for engaging in protected behavior. The requirements for establishing a prima facie case are that (1) the Complainants engaged in protected activity; (2) the Respondent was aware of such conduct; and (3) the Respondent took some action adverse to the Complainants which was more likely than not the result of the protected activity. See Dean Dartey v. Zack Co., 82-ERA-2 (1983). Once Complainants establish a prima facie case, then Respondent has the burden of producing evidence that the adverse action was motivated by legitimate, non-discriminatory reasons or that retaliation simply did not occur. If Employer is successful, Complainants, as the parties bearing the ultimate burden of persuasion, must then show that the proffered reason was but a pretext for retaliation.

Even if Complainants' concerns were only voiced internally, internal complaints are protected under the Act. See Pillow v. Bechtel Construction, Inc., 87-ERA-35 (D&O of Remand), July 19, 1993, slip op. 11 (protected activities included making internal complaints to management and contacting union representative). Although the Fifth Circuit in Brown & Root, Inc. v. Donovan, 747 F.2d 1029 (5th Cir. 1984), held that internal complaints are not protected activity under the Energy Reorganization Act of 1974, 42 U.S.C. §5851(a)(3), the Brown & Root case was legislatively overturned, effective October 24, 1992. 42 U.S.C. §5851(a)(1)(A). "For any case filed after that date, even in the Fifth Circuit, internal complaints are protected under the ERA." West v. Systems Applications International, 94-CAA-15 (Sec'y Apr. 19, 1995), slip op. 6-7.

As to whether or not Complainants' concerns were about safety violations under the Act, I see no reason to spend time on this issue. Certainly, some concerns of the Complainants, whether voiced as a group or individually, were safety related and constituted protected behavior under the Act.⁸ Likewise, Respondent was made aware

⁸ Respondent admits safety concerns were made by at least some of the Complainants, and I agree with Complainants that even if some of the Complainants did not individually raise safety concerns, they were none the less identified as associating with and assisting Williams in his

of the expression of some of these safety concerns by the Complainants. The real issues for me to determine are whether or not any or all of these Complainants were retaliated against by Mason & Hanger because of their expression of safety concerns.

Hostile Work Environment

For Complainants to establish a prima facie case under the Act, they must demonstrate that they suffered adverse employment action. 42 U.S.C. §5851(a)(1). Obvious examples of adverse employment action include discharge, demotion, or failure to promote or hire based upon prior activity. Less obvious examples include harassment due to protected activity that results in a hostile work environment. A hostile work environment theory has been applied in cases brought under the Act and is interpreted consistent with Title VII of the Civil Rights Act of 1964 as amended.

Under Title VII, harassment does not rise to a level of hostile work environment until it is both severe and pervasive thereby creating an abusive work environment. Meritor Sev. Bank, FSB, 477 U.S. 57 (1986). While work place comments or acts may be unwarranted, immature, unprofessional and/or inappropriate, they may still not be severe and pervasive enough to create a hostile work environment. Each case rests on its own particular facts.

Complainants state that as a result of their protected activity, in the form of voicing safety concerns, they were subjected to a hostile work environment which constitutes retaliation under the Act. It is the thrust of Complainants' argument that the Complainants suffered intentional, pervasive and regular discrimination to their detriment (and that of any reasonable person) and that there existed respondeat superior liability.

Respondent, of course, denies the allegations, stating that what hostility existed was actually personnel animosity unrelated to safety which existed between A team members of the W55 program and the Complainants, namely Complainant Williams. Respondent further asserts that when it learned of the situation it did everything it could do to try to alleviate the tension on the W55 program and prevent any similar situations on other programs.

expressions of concerns to the extent if his behavior was protected under the Act theirs was too.

That hostility was present in the W55 program is undisputed. The questions I must resolve are (1) whether the hostility was motivated by Complainants safety concerns and (2) whether Employer knew or should have known of the hostility and failed to take prompt remedial action.

Safety Concerns

Firstly, I do not find that the hostility that existed between members of the A team and Complainants originated over Complainants' safety concerns. In my lengthy recitation of facts, I have attempted to convey that rightly or wrongly, the A team had a sense of ownership of the W55 program because of their long involvement with the project, and that they took issue with the manner in which the Complainants arrived on line in February of 1996. Complainant Williams himself agreed that a large portion of the disharmony that existed between the two groups was due to the fact that the A team took pride in their program. Both investigations of Myers and Noonan found the same to be true.

From the moment of their arrival, the Complainants, most particularly Williams, made threats of lawsuits and shut downs, ignored advice from the experienced A team members and bypassed the chain of command with any concerns they had. Granted, as time wore on quite possibly repeated safety concerns, whether real or perceived, might well have added fuel to the fires of dissension; however, the hostility had been there from the outset for other reasons. As recited in the findings of facts, aside from management being extremely responsive to all perceived safety concerns, many of the A team members themselves testified with approval about some of the changes made and agreed that they were for the best. They never agreed with Complainants attitudes, however.

What I have tried to portray is what I believe to be true, that Complainants did not arrive on line concerned with nothing but safety, only to meet with unwarranted hostility. Jackovich testified that in training some if not all of the Complainants had been distracting from the beginning and almost seemed by design to be disruptive. She also said that their attitude on line was that they could shut the project down.

In sum, I find the hostility that obviously existed between the two groups of employees had early roots, not in safety concerns, but in the attitude of the Complainant Williams, and to some extent the other Complainants, when mixed with the

personalities of the A team members. In making such a finding, I note that I do not necessarily condone the possessive attitude of the A team, but simply that I do not find expressions of safety concerns to be the motivation that seeded the hostility between the two groups.

Employer's Conduct

In Waymire v. Harris County, 86 F.3d 424 (5th Cir., 1996), the U.S. Court of Appeals enumerated five elements which must be proved to base a claim on the theory of hostile work environment. The Court concluded that if a Complainant fails to establish any one of these essential elements, then as a matter of law the claim must fail. One of the essential elements listed is whether the employer knew or should have known about the harassment and failed to take prompt remedial action.

In this instance, despite the fact that management had in place well established policies regarding reporting of improper conduct (RX 103), it appears from the evidence that management was not made aware of real discord between the two teams until March 6, 1996, at which time management immediately took prompt remedial action.

On March 6, 1996, certain members of the A team complained to Ms. Herring that Williams was engaging in hostile conduct toward them. Dr. Weinreich, who had yet to receive Williams' letter of March 4, 1996, (RX 24), was immediately brought into the situation and the complaints addressed. Prior to that date, while the two teams were first adjusting to each other on the line, there had only been expressed concerns about training procedures; and in the latter part of February these concerns had risen to the level of safety meetings which resulted in the stoppage of work from February 29, 1996 until April 4, 1996, while procedures were reviewed.

Likewise, after learning of the dissension between the PTs, the evidence supports a finding that management took just as prompt remedial action. An outside consultant, attorney Billie Garde, known throughout the industry as a whistle blower advocate, was hired to review the Employee Concerns Department; investigations were commissioned, team building and supervisory training was implemented, the program was shut down for weeks while the standards and procedures were rewritten and ultimately a Joint Counsel was created with input and approval of Complainants attorneys to resolve employee disputes. In sum, it is hard for me to imagine more

prompt remedial action than this management took and continued to take after learning of the problems that existed between certain members of the two PT teams on the W55 program. Specifically, the efforts of management have been numerous:

1. On March 6, 1996, the day of the initial complaints, an independent team was appointed to investigate the complaints. The team included Frank George, president of the MTC union, who himself assured Complainant Williams that his appointment would insure that there would be a fair investigation.

2. On March 8, 1996, Dr. Weinreich received Williams' March 4, 1996, letter and informed Mr. Williams he would assign the Employee Concerns Department to investigate Williams' complaint. (Williams refused to participate in such an investigation.)

3. Because of allegations of "A" team members, including his touching Ms. Stone, Williams was temporarily reassigned to another program for which he was qualified pending the investigation. The reassignment entailed neither reduction in salary nor change in title.

4. On April 2, 1996, with the investigation complete, Dr. Weinreich met with Williams and his attorney. Williams had been provided with a copy of the Myer report which detailed results of the independent investigation, and Williams was returned to the W55 program. Again he was offered the assistance of the Employee Concerns Department.

5. On April 8, 1996, Respondent began its Team-Building Program with the W55 personnel.

6. On April 11, 1996, Respondent shut down the W55 program for the Team-Building Program, which included the Covey Training, and for a line by line review of the operating procedures for the entire W55 program. The bay was reopened May 1 and the cell not until May 9, 1996.

7. In July, 1996, the PTs on the two teams were separated so that they did not have to work together and were blended with a third team that had newly arrived.

8. Post-team building, weekly meetings were held with the PTs from the W55

program and they were asked to voice concerns.

9. In August, 1996, Respondent, with advice and consent of Complainants' attorneys (GAP), retained Vince Noonan to independently investigate Mr. Williams concerns.

10. Following receipt of Mr. Noonan's report, his recommendations were and implemented by management. A Joint Counsel was created for the resolution of employee complaints, again with the assistance and input of Complainants' attorneys, with Respondent agreeing to be bound by the recommendation of the panel. Members of the panel include: Vince Noonan, attorney Tom Carpenter of GAP and attorney Billie Garde, who had previously been employed to provide whistle blower instruction to management and to review Respondent's Employee Concerns Department.

While I am not naive enough to believe that these efforts wholly stopped all disharmony which existed between members of the two teams, I do firmly believe that they were reasonably calculated to do just that and that the efforts met with success. They were not "window dressing" as suggested by Complainants.

Several of the Complainants, in fact, testified things were better between the two teams following the training; and, Mr. Williams agreed during the hearing that in his pre-trial deposition he had stated that after he finished the Covey Training and returned to the line on the W55 program that the only incidence of hostility directed against him was an ongoing argument with John Barton, an A Team member with whom he had arguments about who would transfer off of the program. (Tr. 2016). Also, when I personally inquired of the Complainants at trial what more management might have done, none asked could think of anything.

I find it unrealistic that more should have been done. In February of 1996, when the Complainants arrived on line, every concern about safety and procedure was addressed and acted upon immediately by management. Group meetings were held, and by February 29, 1996, Dr. Weinreich himself shut the cell operation down until March 4, for a review of procedures. Then when word reached management on March 6, that hostility existed between the two teams, the W55 program was stopped completely for weeks, the procedures were reviewed and rewritten, the participants were given training, independent investigations were performed and a Joint Counsel was created.

This was a business with a mission, not a Utopia. Everyone on the program could not have been fired or transferred. The designs of Respondent's remedies were obviously not only to quell present problems but to avoid future; and I find that management's actions were reasonable and effective, particularly given that a number of the Complainants' complaints embodied concerns about stares, glares and expressions of unhappiness from members of the A team and on-line supervisors who had been in place for months performing their job when the Complainants arrived in February, 1996, and who, rightly or wrongly, grew frustrated with frequent questioning of, and challenges to, procedures which they felt were adequate and which had proven safe in the past. In other words, the give and take between new and old co-workers which has always existed.

In obvious reliance upon the Noonan report's finding that hostility existed, in my opinion OSHA erred in their determination that Respondent should do more, for OSHA failed to consider the fact that for a claim to be successful on the theory of hostile work environment, the employer knew or should have known about the harassment and failed to take prompt remedial action. That was not the situation here. In his report, Vince Noonan made the following finding, with which I agree and which I find to extend to all Complainants:

The hostility that Mr. Williams is experiencing is what I would refer to as "peer hostility." If management hostility does exist, it is limited to a very few supervisors and once this is brought to the attention of senior management, those supervisors are counseled immediately. The investigator is convinced that senior management will not tolerate hostility between their supervisor and employees.

Having found that Complainants failed to establish that the hostility which existed on the W55 program was motivated by their safety concerns and that Respondent knew or should have known about the hostility and failed to take prompt and reasonable remedial action, I find that Complainants' claims under the Act for relief for a hostile work environment must fail.

Constructive Discharge

I do not find that the working conditions were so intolerable that Mr. Williams had no choice but to resign on November 27, 1996.

At that time, the W55 program was approaching its end. The PT force had been narrowed to include Williams and two other Complainants, Sottile and Rodriguez. On the day prior to his departure, Williams, and the other remaining members, had agreed to try and finish the task the next day so as to have it concluded by Thanksgiving.

On the morning of November 27, everyone arrived and Williams was dispatched to get the keys to the work area. He was stopped along the way by a DOE representative who briefly talked with him. Upon his return, his supervisor, Paul Harter, was admittedly angry, but when the reason for Williams' delay was learned, Mr. Harter's anger was directed at the DOE representative for slowing Williams' delivery of the keys, not at Williams.

In the ensuing moments surrounding the revelation of what had delayed Williams, Williams told Mr. Harter "not to go there" and to "quit the production push," and he declined Harter's offer to diffuse the situation by discussing it further in the office. Williams then disregarded Harter's directive to open the door area. Rather he turned and walked off with the keys announcing he no longer worked there. Complainant Sottile, who was in attendance, expressed surprised about Williams' manner of departure.

Respondent argues, and I agree, that Williams resignation was premeditated. A month earlier Williams had said there were no significant events occurring at work and he might quit after the W55 project to race cars. He still owned his refrigeration company and he had received the November 22, 1996, determination from OSHA, (obviously based on Noonan's report) that a hostile work environment existed and that Respondent should abate the situation by (1) newer or existing programs or (2) negotiation of an amicable work and/or monetary resolution of the matter. By then the other Complainants had joined forces with Complainant and his attorneys filing complaints a few days earlier, the W55 program was over and monetary damages had been suggested by OSHA. It was time to exit.

While this inference may seem harsh, I had the advantage of observing Mr. Williams during the hearing and hearing him testify on more than one occasion. The last time he was called to the stand for rebuttal testimony, Williams became arrogant when asked by Respondent's attorney to read from an exhibit. (Tr. 2015, 2016). He offered his reading response in slow, flat tones, undetectable by a reading of the transcript, but in a manner sufficient to support a potential attitude and conduct on his

part like that testified about by other witnesses, including Jackovich, Moore, Barton, Huton, Stone, DuBose and Ferdinand Rodriguez. Williams also demonstrated, on the same occasion, a propensity to exaggerate by testifying that the time between OSHA's determination and his resignation could have been a week or two. (Tr. 2009). Actually the time was three working days.

In addition to his threats to co-workers of lawsuits and shutdowns, a reading of letters written by Williams to Kathy Herring and Dr. Weinreich also provide clues of an underlining motivation on Mr. Williams' part to either control the work environment or create a scenario from which he might ultimately benefit. (RX 13; CX 24, 26, 28).

He went on line February 2, 1996. Twenty days later, on February 22, Williams wrote Ms. Herring a memorandum and concluded by saying "proven and repeatable process is good, but now is the time for change." On March 4, 1996, still less than a month after arriving on-line, Mr. Williams again wrote Ms. Herring: "we can fix the problems and get back on track with the right goals in mind. It still can be done." The same day he also wrote Dr. Weinreich that he (Williams) had an upcoming meeting with his "company lawyer" and suggested to Dr. Weinreich "I am looking forward to meeting with you, only after the program is up and running smoothly again." (Dr. Weinreich testified he took the letter as a threat.)

In short, it is my finding that Mr. Williams departed the employment of Mason & Hanger voluntarily. In arriving at this conclusion, I realize the motivation of a Complainant does not alter the validity of his allegations. In this instance, however, I find no validity in Mr. Williams' position that on November 27, 1996, Respondent had made working conditions so intolerable that a reasonable person would have believed he had no choice but to quit. The W55 program for all practical purposes was over, he had voiced no complaints for a while and OSHA had ruled in his favor. Conditions should have been good.

Adverse Actions

Williams

Aside from hostile work environment and constructive discharge, Williams also asserts that he suffered an adverse action by being temporarily reassigned to another weapons program in March, 1996, pending investigation of the complaints lodged

against him by co-workers. I do not agree.

Mr. Williams agreed that he would not have been troubled with this reassignment had Ms. Stone too been reassigned. He acknowledged that he was qualified to work on the other program, that he suffered no loss of pay nor change in title and that he was returned to the W55 program as soon as the investigation was completed.

Respondent's policy was to temporarily reassign the person against whom the complaint was lodged. Here a number of PTs voiced concern about Williams attitude and behavior (not his safety concerns). It was Williams who touched Ms. Stone, not vice versa. A neutral panel of investigators were chosen, including the President of Williams' union, to determine if the complaints merited further action. They did not, and Williams was returned to the program.

The Act protects employees from actions taken in retaliation for engaging in activities protected by the Act. It does not prevent an Employer from engaging in personnel activities. Williams has not made out a case that he was retaliated against for protected activity or that his temporary reassignment was in any manner an adverse action on the part of Respondent.

McQuay, Rodriguez and Sottile

Aside from hostile working environment, Complainants McQuay, Rodriguez and Sottile allege that in the latter part of November, 1996, as the W55 program was drawing to a close, they were reassigned to sweep ramps and such assignments amounted to adverse action being taken against them. I do not agree.

These assignments were very temporary. These men, along with other PTs, were assigned to the building manager once their services were no longer needed on the W55 program. The building manager in turn assigned the tasks. This was a common practice between programs to keep employees from being idle.

These three Complainants were subsequently given permanent assignments on other programs, and Rodriguez agreed that such temporary assignments to housekeeping chores were typical at the end of programs. This was not adverse action, and though it might have been less than desirable work, the employees received their same wage, suffered no loss of status and were ultimately assigned to other programs.

Lastly, as to Complainant Sottile's claim that he was wrongly denied a promotion in the summer of 1996, he offered no evidence that his failure to get the position was any form of retaliation. To the contrary, the position was filled by someone who already held the job title, and, as Respondent argues, there is nothing in evidence to link Sottile's denial of the job to any safety complaints he might have made and/or been associated with.

Conclusion

As stated at the outset, this was a lengthy case with a lot of witnesses and much documentary evidence. I intentionally spent a great deal of time detailing the numerous facts presented because I believe they tell the story. Despite the amount of evidence, and though some supported Complainants' allegations about various expressions of safety concerns and hostility that existed amongst themselves and the "A" team, the evidence does not support the Complainants' contentions that the hostility that existed was motivated by their safety concerns or that Mason & Hanger sat idly by and allowed the hostile work environment to exist.

On the fourth day of the trial, Anne Jackovich was offered by Respondent as a subpoenaed witness. Ms. Jackovich had been a B team member, gone through training with the Complainants and eventually joined them on the line. At the outset of her testimony, Respondents counsel queried Ms. Jackovich about her obvious unhappiness with being called as a witness and inquired "why." She responded:

A. Because I had the feeling that it should have never come this far.

Q. What should have never come this far?

A. What we're doing today.

Q. And - -

A. Because I felt everything had been answered. (Tr. 1308).

In a succinct fashion, her response summarizes my view of the evidence. The protection processes of the Act were established to encourage nuclear industry employees to raise safety concerns with their employers or with others without fear of

discrimination. It was not designed to guarantee a perfect work place nor resolve every human resources or personnel disagreement that could be resolved by other means. In this instance it is my finding that Mason & Hanger encouraged the voicing of safety concerns by employees, took no adverse action against those who did so and responded promptly with remedial action to diffuse any hostility, for whatever reason it was motivated, that existed on the W55 program.

Damages, Attorneys Fees and Costs

Because Complainants have failed in their claims for relief under the Act, I find that they are not entitled to damages, costs, or attorneys fees from Respondent. Likewise, I find that since no regulation, statute or executive order addresses a successful Respondent's right to recover attorney fees and costs, neither is Respondent entitled to the assessment of costs or attorneys fees against the Complainants.

RECOMMENDED ORDER

It is my recommendation that Respondent should prevail in this case and that Complainants' complaints should be dismissed.

SO ORDERED this ____ day of November, 1997, at Metairie, Louisiana.

C. RICHARD AVERY
Administrative Law Judge

CRA:kw

NOTICE: This Recommended Decision and Order and the administrative file in this matter will be forwarded for review by the Secretary of Labor to the Administrative Review Board, U. S. Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Ave., N. W., Washington, D. C. 20210. The Administrative Review Board has the responsibility to advise and assist the Secretary in the preparation and issuance of final decisions in employee protection cases adjudicated under the regulations at 29 C. F. R. Parts 24 and 1978. See 55 Fed. Reg. 13250 (1990).